No. 1670

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

WILLIAM A. CLARK,
Appellee.

TESTIMONY.

VOL. IV

Pages 1585 to 2112, inclusive.

Upon Appeal from the United States Circuit Court for the District of Montana.

The Filmer Brothers Co. Print, 424 Sansome St., S. F.

(Testimony of Leonard Barrott.)

Q. And you paid the money which you borrowed and got from Mr. Cobban with part of your own money to the government for the land. A. Yes, sir.

Q. At what rate did you pay per acre, if you remember?

A. I don't remember. Two dollars and a half an acre, I think.

Q. Two dollars and a half an acre you think?

A. Yes, sir.

Q. When was it that you repaid the money which you had borrowed from Mr. Cobban, and when was it that you sold the land with reference to your making final proof?

A. I returned the money in the sale of the land and accepted the balance, as to repay myself with.

Q. How long after the time of making your final proof was it that you made this sale?

A. Well, it was always been my impression ever since it came up that it was something like two or three weeks before I got my money.

Q. Before you sold?

A. Yes, before I closed my bargain. But the papers show that whatever it is.

Q. Had you ever had any conversation with Mr. Cobban about selling the land until the time you did sell it to him?

A. Yes, I had a talk with him two or three times.

Q. Had you any agreement with him concerning the sale of the land? A. No, sir.

(Testimony of Leonard Barrott.)

Q. What was said about that between you?

A. Mr. Cobban said he wouldn't talk about it until I got title.

Q. He refused to talk about it?

A. Yes; he said I could sell it to any other parties if I could get a better price for it.

Q. Who were these other parties?

A. There was a party from Great Falls, as I understood it, and a man from Milwaukee, and also the Blackfoot Milling Company.

Q. When you sold to Mr. Cobban, you were at liberty to sell to anyone else had you desired so to do, weren't you?

A. Yes, sir; by continuing to pay Mr. Cobban interest on that money, I could have sold to anybody I might have wanted to.

Q. What arrangements did you make about borrowing money from Mr. Cobban or anyone else?

A. Well, Mr. Cobban, I say, was to get a mortgage on the land after I proved up on it.

Q. To secure the payment of the money?

A. Yes, sir; to secure the payment on it.

Q. This agreement was made between you and Mr. Cobban so as to insure you that money for which to pay for the land?

A. Yes, sir; to pay for the land.

Q. How much did that money amount to, do you remember?

A. I could tell by figuring it up. Two dollars and a

(Testimony of Leonard Barrott.)

half an acre—a hundred and sixty acres. There wasn't quite a hundred and sixty acres.

Q. In the neighborhood, then, of four hundred dollars?

A. Yes, sir; in the neighborhood of four hundred dollars.

Q. How was it that Catlin paid this money into the land office for you?

A. Because they didn't want to hand it over to me until I could give security for it.

Q. And was Mr. Catlin acting as your attorney in this matter?

A. He was acting as my assistant in securing this claim.

Q. Well, he is an attorney, isn't he, practicing before the various land offices?

A. I think he is; anyway, he has been a land officer.

Q. You knew him when he was register of the land office, did you not?

A. No, sir; not until after he was out.

Q. But you knew of the fact that he had been connected with the land department of the United States.

A. Yes, sir; I knew that he understood the business.

Redirect Examination.

(By Mr. MAYNARD.)

Q. You are arrested for perjury, and have been indicted, have you not? A. I believe so, yes, sir.

Q. And you are under indictment now?

A. Yes, sir.

(Testimony of Leonard Barrott.)

Q. And Mr. Walsh, one of the counsel here, as you understand it, is one of your attorneys?

A. I understand so; yes, sir.

Q. How many talks have you had with him since you have been in town here? A. Only once.

Q. Where did you see him?

A. At his office.

Q. How many times have you seen Mr. Cobban, Mr. Barrott?

A. I have seen Mr. Cobban; came up here with him. I have met him, I guess, only once since I have been in town. I met him once up at the Cosmopolitan Hotel, and I met him here.

LEONARD BARROTT.

Subscribed and sworn to before me this sixth day of March, 192.

HENRY N. BLAKE,
Examiner in Chancery.

EDWARD D. DONEY, a witness called by the complainant, being first duly sworn by the Examiner, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Doney, where do you live?

A. Ovando.

Q. How long have you lived there?

A. Thirteen years.

Q. Did you make a timber entry, Mr. Doney?

(Testimony of Edward D. Doney.)

A. Yes, sir.

Q. Will you please state the circumstances of your making this entry?

A. Yes, sir. I live in Ovando. I have had a homestead for eleven years. Well(after stating that I lived there, I was going to say that after living there for a year or more, I was going to speak about the survey. It was surveyed about one year after I went there, and the land was subject to entry. Part of this land that I live on has quite a lot of timber on it. The other part of it is meadow. I occupy it, and it being on unsurveyed land, and I have lived on it so long, I had to prove up on it; at least I had notice to that effect from the Master Commissioner, and the first of May, I think it was, I filed on it. I think it was the first of May.

Q. The first of May of what year?

A. Two years ago, I think it is.

Q. Eighteen ninety-nine?

A. Well, yes; just about that time of the year. I don't remember just exactly what time of the year. I had money to file on. I didn't have any money to prove up on it, and as I understood that they were selling timber land, and some were buying timber around there, I went to Mr. Faust and told him that if he would advance me the money I would prove up on the land as soon as I could, and being as I had been there so long, I could do it right away.

Q. That is the man that runs the store up there?

A. Yes, sir.

(Testimony of Edward D. Doney.)

Q. Well, go on.

A. He said that was all right. I had been accustomed to getting money there, that is, certain small sums. During that time these fellows were all hunting timber around there. I had been living around that country so long, and as it was possible to get a claim on these timber lands and I knew it, and was acquainted with the lands as much as any man there, I told him I believed I would file on a piece of timber land.

Q. Who did you tell that to?

A. I told it to Mr. Faust, a partner in this firm of Jackway & Faust. I told him I would like to get enough money to take up a claim. I knew there was lots of timber land around in that country because I was well acquainted with it, and that if I could get the money that I could prove up on it. He said that was all right, and so it went on, and it was all settled to that effect.

Q. Well, go on.

A. I came here to Helena, to file on this land, and my witnesses were Rob Dixon and Mrs. R. T. McLane. She has been around that country, I think, a little longer than I have. Perhaps not quite as long though. I came down here and just filed on it. In the course of time, I think it was in September, or somewhere near there, I proved up on it. I think it was somewhere along about that time that I proved up on it. There wasn't much said about the price of it. I told him about selling it, that I calculated to sell it, and that I calculated to sell my homestead —the timber on it, and I went around, and I believe that

(Testimony of Edward D. Doney.)

same day that I proved up I came across a fellow who was some manager of a sawmill in Bonner, or around somewhere there; I couldn't tell you where, and I couldn't tell his name. I never had heard his name, I don't think. At any rate, I was talking to him about it, and I asked him whether he was buying timber around that country, and he seemed to be a little interested. He seemed to be the right man, and he asked me how it was around Montour Creek. He didn't seem to be very much interested in it, and he got talking to some gentleman there, and I never said any more about it, and so I went home, and on the way home Mr. Faust asked me what I would take for this ground, and I told him I didn't know yet; and it went along about a week or so, and he asked me if I would take twelve hundred dollars for my claim and my wife's claim altogether, and I told him I would let him know. I must have waited around for about a couple of weeks or something like that, and then I took a notion that I had better take it, and I went around there and told him that I would take it. He came up to my house afterwards, I think it must have been a month, or something like that, when he came around to my house—

Q. A month after you proved up?

A. I think so, somewhere about that. That is all I could get, and so I thought I had better sell at that figure.

Q. What were you doing during this month after you proved up, and before you sold?

A. Well, sir, I am on a ranch, and I worked around

(Testimony of Edward D. Doney.)

the place. I do work around there. Generally stay at home when I can't work outside.

Q. Your wife's name is Martha M. J. Doney, isn't it?

A. Yes, sir.

Q. She is sick, isn't she?

A. Well, you might say she is sick, you may as well say she is. She cannot move around much. She cannot ride around with a team.

Q. Now, I want you to testify under oath in regard to her condition, because she has been subpoenaed, and I want to see what you got to say about it.

By Mr. WALSH.—We move to strike out this declaration of the counsel.

Q. Please state whether your wife was able to be around.

A. No, sir, she is not to the best of my knowledge.

Q. She has been subpoenaed to appear here, has she not?

A. Why I understand she has not been subpoenaed that I know of.

Q. You don't know of the fact of her having been subpoenaed? A. No, sir.

Q. Is she able to work?

A. No, don't do but mighty little work. She has plenty of help around the house. She has very little to do around the house.

Q. She isn't able to travel, you say?

(Testimony of Edward D. Doney.)

A. No, I don't think she could safely travel without injuring her health more so than it is.

Q. You have been here some days, have you not?

A. I have been here eight days.

Q. How many times have you seen counsel on the other side?

A. Well, I made it my business seeing a crowd go up there, and I went up to his office, and have had but very few words with him. That is the only time I ever seen him in my life. I wasn't requested to come to his office at all.

Q. Now, I understand that in your case besides the sale of this stone and timber claim to Mr. Cobban you also sold some timber on your homestead claim.

By Mr. WALSH.—Wait just a moment. We object to that as assuming a fact that has not been testified to by the witness.

By Mr. MAYNARD.—You haven't heard your witness testify apparently. He said in his testimony that he had sold his claim to Mr. Faust, and that the sale was made about a month after the time when he made his final proofs, and that he hadn't made up his mind to sell the claim until about a month after he had made his final proofs, and that then the sale was made to Mr. Faust.

A. Well, it was made, you understand. I don't know as I made any papers to that effect, or that it was sold really to him. He asked me if I would take twelve hun-

(Testimony of Edward D. Doney.)

dred dollars. Whether he got it for any other men and assigned it to him or not, I don't know.

Q. What did you say, that you didn't know who you sold to?

A. I cannot say about the Faust transaction. The circumstances of that, and if he put it in his own name or not. It was allright as far as I was concerned. I didn't care who got it. I didn't make any inquiries about it. If he had made or assigned it to Mr. Cobban, I didn't care. I considered that it was none of my business as long as I got my money out of it. I could have found out if I wanted to.

Q. When you came to Helena, did your wife come with you? A. She did.

Q. She made a filing at the same time with yourself?

A. Yes, sir.

Q. When you came here to make your final proofs, did she make final proofs in her case?

A. Why she made it at the same time I did.

Q. That is what I asked you. A. Yes, sir.

Q. And when you conveyed your land she conveyed at the same time?

A. Yes, sir, her business and mine is all the same thing.

Q. Now, just state, Mr. Doney, what your ranch consists of?

A. My ranch consists of about forty acres out of a quarter section of meadow land, but it is not all cleared. I have quite a bit of improvement, and my home is upon

(Testimony of Edward D. Doney.)

the meadow land. About ten acres of it is cleared meadow, I believe, that I use for haying.

Q. Yes, ten acres out of the forty?

A. Yes, sir. Oh, it is all meadow land. You know how this meadow is.

Q. Well, what else? A. Well, that is all.

Q. There is where you live on this forty acres?

A. No, sir, I don't live on this forty acres; I live on a quarter section. I don't need to live on the meadow.

Q. Whereabouts is this place, that you live?

A. I live on section twenty-four, township fifteen north of range twelve, west.

Q. How large a place is that?

A. Why a hundred and sixty acres.

Q. That is where you live?

A. Yes, sir, that is where I live.

Q. And where you have lived for thirteen years, you say, about?

A. No, I live on a piece of land adjoining, but I make use of the two places. I bought the improvements on another place, and once in a while I live on this other place, but I call this quarter section my home. I am living five miles from a school and the children cannot go that far, so I got a house down there on a piece of land and put it up, and the children go there in the summer time so that they can go to school. That is why I don't live all the time on this quarter section.

Q. You built a house on some other person's land to enable your children to go to school?

(Testimony of Edward D. Doney.)

A. Yes, in the school time.

Q. That is, in the summer time, that is when you mean, I suppose?

A. Yes, sir, in the summer time, that is when they go to school.

Q. And then you have got this quarter section?

A. On section twenty-four?

Q. Yes, sir. A. Yes, sir.

Q. What improvements are there on that?

A. Well, I haven't got it all fenced. I just got it fenced for my meadow around there.

A. Well, that is just the meadow that is included in this one hundred and sixty acres?

A. Why sure.

Q. So you have this meadow on this one hundred and sixty acres, and the place where you live in the summer?

A. Yes, I have a hundred and sixty acres and have got a house on it; and I have got a house five miles from this place near the school house. I live there during the summer time; I live there, you might say, so that the children can go to school, and when it comes haying time we move back onto the ranch, and I do my work.

Q. Then there is these two places?

A. Yes, sir.

Q. And on this a hundred and sixty acres, you say there is some timber growing?

A. Yes, on all but forty acres, about forty acres; I don't know exactly how much.

(Testimony of Edward D. Doney.)

Q. You mean that there is about a hundred and twenty acres of wood lot?

A. Twenty acres and forty acres wouldn't be a hundred and sixty.

Q. I thought you said a hundred and sixty?

A. Yes, that is right, I said a hundred and sixty.

Q. Was the timber growing on this a hundred and twenty acres?

A. Yes, sir, it is on there yet. I wish they would take it off.

Q. This timber growing on this a hundred and twenty acres that you have now testified about is the timber that you sold to Mr. Cobban, some of it, isn't it?

A. I understand Mr. Cobban got it.

Q. You understand that Mr. Cobban bought it?

A. Yes, sir.

Q. How much did you sell that portion of the timber for?

A. I don't know. I sold it all together. The timber claim and this other claim all together. You will have to look at the deeds.

Q. Have you any knowledge as to the value of the timber growing on that hundred and twenty acres?

A. No, sir, I don't know what they pay for timber.

Q. You have lived on this place for thirteen years?

A. I have.

Q. And for thirteen years you have known of this timber? And you have sworn that you don't know its value?

(Testimony of Edward D. Doney.)

A. Why should I if I don't know what they pay for it? I can't state that if I don't know the value of it.

Q. Did you put any estimate on it yourself?

A. No, not as to the value.

Q. At no time?

A. No, sir, I valued it to a certain extent, but not to amount to much. What it ought to be worth or something of that kind.

Q. I now show you the original statement that you made here at the Helena land office on the 27th day of May, 1899, and ask you if that is your signature?

A. Yes, sir.

Q. Do you know your wife's signature?

A. I think I do.

Q. Do you think that is it?

(Counsel shows witness the statement of his wife, Martha M. J. Doney, with her signature attached thereto.)

A. It looks something like it.

Q. I show the witness the original statement of Martha M. J. Doney, and he recognizes her signature thereto.

By Mr. WALSH.—We move to strike out the statement of the counsel for the reason that it does not call for any answer from the witness.

Q. I read from the original statement of Edward Doney: "May 27th, 1899, I, Edward D. Doney, of Ovando, County of Deer Lodge, State of Montana, desiring to avail myself of the provisions of the Act of Congress of

(Testimony of Edward D. Doney.)

June 3, 1878, entitled, 'An Act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory,' as extended to all the public land States by Act of August 4, 1892, for the purchase of the southwest quarter of the northwest quarter and the west half of the southwest quarter and the southeast quarter of the southwest quarter of section two, in township number fifteen north of range twelve, west, in the district of lands subject to sale at Missoula, Montana." And from the original statement of his wife, Martha M. J. Doney, which has been received here in evidence. I read as follows: "May 27th, 1899, I, Martha M. J. Doney, of Ovando, County of Deer Lodge, State of Montana, desiring to avail myself, etc., for the purchase of the north half of the northeast quarter of section ten, township fifteen, north, range twelve, west, in the district of lands subject to sale at Helena, Montana."

By Mr. WALSH.—We move to strike out the statement of the counsel upon the ground that it is not a question to the witness, and requires no answer of him.

Q. Now, Mr. Doney, is this the description contained in your statement there, your home?

A. Yes, sir. It is in that section.

Q. How far is it from your home?

A. About three miles and a half. I couldn't tell right close to it, but it isn't exactly square across the section, but somewheres about that.

Q. How far is your wife's location from there?

(Testimony of Edward D. Doney.)

A. Why, they corner together, ten and two always corners.

Q. Now, you came here to Helena with your wife on the 27th of May, 1899? A. You say it.

Q. Yes, sir. A. Yes, sir.

Q. How long a time was it before this, May 27th, 1899, that you went to this location to look at it?

A. It is a good guess. I didn't ever go to look at the timber to see if it was there. I had been there so much before.

Q. Do I understand from your answer that you didn't go at any particular time?

A. I want you to understand that I had been there lots of times. I had known the country so well. I had been there thirteen years and knew the country so well. I couldn't go away from the house three or four miles without going out of the way. I have helped to make the survey of that country and have been there a good many times.

Q. You may state whether you did or did not go there to look at the land. A. I did.

Q. Did you go on the land to look at this location?

A. Oh, yes, and to look at the timber. Is that what you mean? A. Yes, sir.

Q. Yes, sir.

A. Yes; well, I don't know whether I went or not. I cannot tell that, whether I went particularly for this or not. I don't see any reason if I wanted to have a good piece of land as the other parties had I knew I

(Testimony of Edward D. Doney.)

could get it and that that piece of ground was good enough for me, and I took it.

Q. Is that the best answer you can give to my question? A. Yes, sir, it is.

Q. You have no recollection of having gone to this particular description at any time with reference to the location of this claim?

A. I don't know how to answer that. I have been there so much and I didn't know that I had to go there. I have answered it this way. I didn't see any reason to go over there when I had been over the ground so much.

Q. If you didn't go there and saw no reason to go there where and from whom did you receive this description, the southwest quarter of the northwest quarter and the west half of the southwest quarter and the southeast quarter of the southwest quarter of section 2.

A. Well, I cannot tell about it without looking at it. I know exactly how the land lays and I know how the country was, and how that timber was. I didn't want anybody to locate me, didn't ask anybody at all. Don't know anybody; that is just how it was. I surveyed that country with Mr. McElroy, W. W. McElroy. I seen him here this morning.

Q. How did you know that that particular description was open for location?

A. I was one of the first ones that knew the timber around there, and that if anybody had located it I would have found it out. I was sure of that.

Q. Who would you have found it out from?

(Testimony of Edward D. Doney.)

A. From the land office, I suppose, or the first one that came along there. I know it wasn't located. And that is the reason that I got the money to take it up. If I wasn't sure I wouldn't venture that far. I am pretty sure of that.

Q. Are you able to state as to whether or not your wife went upon the land before she came to Helena to make the location of her description?

A. Of course she went there.

Q. Of course she went there? A. Yes, sir.

Q. Before she came to Helena to make her location?

A. Yes, sir, she had been on the ground I am pretty sure, a great many times. I don't know but what she might be as well posted in the roads around that country as I am myself. She knew her way about there.

Q. How about that particular description that is down in her statement? How did she receive that?

A. How did she get that?

Q. That particular description of land. How did she receive that? Who did she receive it from?

A. I gave it to her.

Q. How do I understand that you got that?

A. Well, I knew the survey, knew the corners there, because I helped to survey it. I knew the location and knew where she could go to find the timber. I don't think she had notice of any filings. She went over there and I told her there was about eighty acres there that was pretty good timber, and she took that claim.

(Testimony of Edward D. Doney.)

Q. Have you any personal knowledge of her going to look at the description before she came to Helena?

A. I have.

Q. Who did she go with?

A. I don't know, she went horseback. I know one of the girls was along. I wasn't with her. Didn't want to go down. She knew where it was and could go herself.

Q. Before you came here on the 27th of May?

A. Yes, sir.

Q. Which one of the girls went with her before the 27th of May to look at this particular description?

A. Well, one of the two girls, I think I will state it was Gertie. Gertie was her name. I think that was her.

Q. You are not sure of that?

A. No, sir. I wouldn't be sure which one it was, but I think it was Gertie.

Q. You are not sure which one of the girls it was?

A. No, sir.

Q. You are sure one of the girls went with her to make this personal examination? A. Yes, sir.

Q. Now, then, your wife swears in her statement as follows: "State of Montana, County of Deer Lodge—ss. Martha M. J. Doney, being duly sworn, upon oath says, in relation to her said entry under the Stone and Timber Act number 6134, made by her on the fourteenth day of August, A. D. 1899, for the north half of the northeast quarter of section ten, township fifteen north, range twelve west, that she made special examination of the

(Testimony of Edward D. Doney.)

above-described lands on the tenth day of August, A. D. 1899."

A. Well, you never asked me whether she went in August or not.

Q. And that the character of the land was then and is now chiefly timber land being valuable for no other purpose on account of the dense growth of timber thereon, and the high, rocky and rolling lay of the ground. Martha M. J. Doney, sworn to on this—subscribed and sworn to before me this twenty-fourth day of February, A. D. 1901, Charles A. Jakways, United States Commissioner, Ovando, Deer Lodge County, Montana. Now, then, if she made this special examination in May before she came over here in May how is it that she afterwards made a special examination on the 10th day of August, 1899?

A. Well, I will tell you, I believe I was mistaken in that. It was in August. I am sure I was mistaken in that. I will take it back, I did think it was then, but it wasn't. It would be hard to remember the date that I filed on it. I didn't keep no records.

Q. Have you, after having sworn positively several times about this personal examination, have you no better recollection on any of these things than you have on this matter?

A. I claim that is all my recollection fails on—this one thing. I have failed on that; any man may be mistaken. I have made mistakes myself, in other things, and an awful sight worse than that.

(Testimony of Edward D. Doney.)

Q. This appears in a typewritten affidavit on this statement and is made before Mr. Charles A. Jakways on the 24th day of February, 1900. Will you state to the court here how it happened that your wife made that affidavit months afterwards?

A. I don't know how that was.

Q. Don't know anything about it?

A. I suppose I did but I never knew there was any such thing as that written up. That was a year afterwards, wasn't it?

Q. No, sir, it was in nineteen hundred that this affidavit was made, as to an examination made the preceding August.

By Mr. WALSH.—What is the question?

By Mr. MAYNARD.—I asked the witness if he knows how his wife came to make this affidavit on the 14th day of August, 1899.

A. You said February, didn't you?

Q. I said she swore to it in February.

A. Well, we didn't come to Helena then. I didn't understand that, by gosh I didn't. I didn't have any transaction there in February that I know of.

Q. It is true, then, now that I show you these papers that your wife didn't make a personal examination of this land until several months after she came here to Helena to file?

By Mr. BICKFORD.—We object to that as being leading; and as not at all evident from anything there is

(Testimony of Edward D. Doney.)

in the papers. And it is assuming a fact that does not exist.

A. Well, it is.

Q. Now, Mr. Doney, who gave you those exact descriptions to bring here to Helena to make your filings on? A. I have answered that, haven't I?

By Mr. WALSH.—The witness has answered that already.

Q. Who gave you those exact descriptions, Mr. Doney? A. Nobody; I done it myself.

Q. And you made your descriptions without going to the ground at all?

A. Well, the papers have that.

Q. Without going there, without that paper?

A. Yes, sir.

Q. And without running any lines out there?

A. The lines are all there. The line goes along the land there.

Q. What?

A. The land is taken up along the line. It is right on the corner. It is a quarter of a mile north and south and a mile east and west.

Q. And without knowing of the fact whether it had been located by anybody else or not?

A. I was there and it wasn't located.

Q. But you had no knowledge on the subject?

A. Well, I had the knowledge in this way because I

(Testimony of Edward D. Doney.)

was pretty near to the land and was posted on who took up the land and when it was taken up.

Q. Previous to your coming here to Helena how many talks had you had with Mr. Faust on this subject?

A. I don't remember only one time. I went on and told him about it when I took my homestead. I guess a couple of times.

Q. Now, let me understand you. Did you go to see him, or did he come to see you?

A. I went to see him about my homestead the first thing.

Q. About your homestead?

A. Yes, sir. About selling the timber land on my homestead after I proved up on it to see if I could sell the timber. You see if I had lived on that land five years more, and there would be no survey made of it I wouldn't need to prove up. If I could prove up on it I would have a chance to sell the timber after I would prove up on it. I had no money of my own.

Q. How much money did it take to prove up?

A. Twenty-eight dollars.

Q. And you say you didn't have any money to prove up? A. No, sir.

Q. You wanted to see him about borrowing twenty-eight dollars to prove up? A. To prove up.

Q. Yes.

A. Oh, I thought it would take more than that to prove up.

(Testimony of Edward D. Doney.)

Q. About what would it cost to prove up?

A. Thirty dollars.

Q. You didn't have the thirty dollars and you wanted to see him about borrowing it? A. Yes, sir.

Q. Well, did you borrow the thirty dollars?

A. I did.

Q. Any more?

A. Well, you might call it borrowed if you like. It was all the money I could get from him. I told him he would have to advance the money; that is all I borrowed on this land.

Q. And that is what you went to see him about wasn't it? A. Yes, sir.

Q. And there wasn't anything said about this stone and timber claim at the time? A. No, sir.

Q. Well, when did you first speak to him about this stone and timber claim for yourself and wife?

A. Oh, pretty soon afterwards.

Q. How soon afterwards?

A. Oh, I couldn't tell, a few days afterwards.

Q. How did you happen to speak to him about that?

A. Well, I see quite a few around there hunting timber up and wanting to locate timber and I knew it was the custom to take up timber claims and so on and sell the timber and I thought I would take advantage of it being as how the land was surveyed and I took up a timber claim.

Q. Well, you knew within a few days before when you borrowed the thirty dollars?

(Testimony of Edward D. Doney.)

A. Well, you see I wouldn't have the money to prove up on this timber land. If I could prove up on my homestead I would have money then to prove up on the timber land, that is where I would get my money.

Q. Well, what did you do with the thirty dollars?

A. Why, I gave it to the United States Commissioner, Mr. Jakways.

Q. You borrowed it from Mr. Faust and gave it to his partner, Mr. Jakways?

A. Yes, he doesn't stay in the store very much. He is on the ranch most of the time.

Q. And what did you get when you had the thirty dollars?

A. What did I get? Why I waited until they got action on the land and got my deed.

Q. Did you get your deed?

A. No, I didn't get it then, of course. It took a long while to get it.

Q. Have you got it since? A. Yes, sir.

Q. You have got the deed now?

A. Yes, sir, on the homestead I sold the timber, but I reserved the land.

Q. You sold the timber off this a hundred and twenty acres? A. Yes, sir.

By Mr. BICKFORD.—We move to strike out all of the testimony given by this witness concerning his homestead claim for the reason that the same is irrelevant and immaterial, there being no allegation in the bill of complaint herein filed concerning any transaction con-

(Testimony of Edward D. Doney.)

nected with the homestead entry of the witness under the Stone and Timber Act.

Q. How long was it after you saw Mr. Jakways and Faust before you came with your wife to Helena?

A. Well, I told you. He is a merchant there. We saw him most every day or two and it would be pretty hard to tell exactly.

Q. What?

A. I say it is pretty hard to tell exactly, because we saw him every day—not every day, but every day when we were in town or at the store.

Q. Well, when you came here on the 27th of May to make your filing, this same Mr. Faust came with you?

A. He did; came here as a witness.

Q. At the time of your filing?

A. Oh, no; didn't want any witness at the filing. No, he didn't come with me to the filing.

Q. Who did come with you?

A. I don't know; there was quite a few came down.

Q. How many?

A. Well. it wasn't when we came down to file; no, that is the only time he came down, when he came down with me, as a witness.

Q. Who came down?

A. Mr. Faust, I refer to.

Q. Who came down with you when you came to prove up?

A. I don't know; there was quite a few came down.

Q. How many would you say?

(Testimony of Edward D. Doney.)

A. I don't know.

Q. Ten, do you think?

A. I couldn't say.

Q. You couldn't say? A. No, sir; I couldn't say.

Q. You didn't keep track?

A. No, sir; there was quite a few of them, but I couldn't keep track of them.

Q. Both men and women? A. Yes, of course.

Q. Of course, how many men about?

A. I don't know.

Q. How many women? A. I don't know that.

Q. Did they all go to the land office with you?

A. No, sir.

Q. They were all there at the same time?

A. No, sir.

Q. How many were there?

A. I don't know; there was some strangers in there doing business at the time.

Q. I mean of this party that came with you?

A. I don't know; two or three of us; there was quite a crowd there altogether. They were crowded around in there. Some of them had some business or other; I don't know; I couldn't tell.

Q. What did you do between the time of your filing and making your final proof? A. Haying.

Q. Haying? A. Yes, sir.

Q. You stayed at hime, did you? A. Yes, sir.

Q. You didn't go up in the mountains again to this location?

(Testimony of Edward D. Doney.)

A. Might have many times, for all I know.

Q. I mean this particular location?

A. Liable to go there; was up there so much.

Q. You have no knowledge of it, though?

A. I couldn't swear as to the particular time, but I often go over that country.

Q. Well, when you came up again with your wife to make your final proofs, Mr. Faust then came with you?

A. He did.

Q. Who was this Mr. Dixon?

A. A saloon keeper there in Ovando.

Q. How did Mr. Dixon happen to come along?

A. I asked him to.

Q. Why should he come?

A. He came as a witness.

Q. A witness for what?

A. I understood you have to have a witness to prove up?

Q. When did you ask him to come?

A. I asked him the morning that we left. No, the evening before we would get away. Let us see, that would be two days before we proved up. Oh, one day. I don't think we got here in one day, though.

Q. That was in Ovando, was it? A. Yes, sir.

Q. That was while you were on your way to Helena?

A. That I asked Dixon to come?

Q. Yes.

A. No, I lived five miles from town, and I went to town to see him and to come out here on the stage, and

(Testimony of Edward D. Doney.)

so on, and I had to take—I couldn't come on the stage, and so I got Mr. Dixon to come to Helena as a witness.

Q. And that is the time you spoke to Mr. Dixon?

A. Yes, sir.

Q. The first time?

A. Yes, sir; when I asked him to be a witness.

Q. And you came to Helena the next morning?

A. I think it was; yes, sir.

Q. Well, he didn't happen up on the land with you, did he?

A. He was very well acquainted in that country. He had been on the land before, he told me so.

Q. Well, how could he tell this particular description?

A. Well, I showed him the location, and talked to him about it. He wanted to take up a timber claim, too.

Q. When was that?

A. Oh, a few days before, or something like that.

Q. A few days before?

A. Yes; a week or so. I had been showing a good many different ones.

Q. Will you swear that you had Mr. Dixon on this land?

A. I had him up on this land for himself. I had him for myself. He wanted me to show him where there was some good timber.

Q. When was that?

A. Oh, let me see; I can't remember when I went to look at that timber.

(Testimony of Edward D. Doney.)

Q. Can't you remember that?

A. It must have been sometime in April, come to think of it now. I don't know when it was, but it was some time in April, I think.

Q. Well, tell us about that now.

A. Nothing more than I just went there with him and showed him the land.

Q. Where did you meet him?

A. He asked me to come down to his house and meet him.

Q. He did? A. Yes, sir.

Q. Where was his house? A. At Ovando.

Q. Went down there to meet him?

A. Yes, went to show him where this ground was as I promised him.

Q. What direction was this land from his home?

A. Easterly.

Q. How many miles? A. Five miles, I guess.

Q. Five miles? A. Yes, sir,

Q. No more than that?

A. Why, it might be by the road; I don't know.

Q. It might be ten?

A. No, sir; it isn't no ten miles, across a township; Ovando is in the same township.

Q. You swear that you went down there and got Mr. Dixon to look at this timber?

A. Well, he wanted some land, and I said that I would show him the ground.

Q. You did show him the ground? A. Yes, sir.

Q. You say the first time you spoke to him about

(Testimony of Edward D. Doney.)

coming here as a witness was the night before you came here to prove up?

A. Oh, well, I spoke to him about the location. I don't understand that these two—about these two things you are asking me about together.

Q. How much money was paid into the land office?

A. I don't know.

Q. You don't know how much? A. No, sir.

Q. Why don't you know?

A. Because I told him I would take twelve hundred dollars for it, and he to pay all of the expenses.

Q. So you didn't pay any money into the land office yourself, for yourself and your wife?

A. No—I had—I did in one way; I made arrangements with Mr. Faust to settle all that business, and you can call it paying it to me; it makes no difference to me what you call it.

Q. You made arrangements with Mr. Faust to prove up, did you? A. Yes, sir.

Q. And pay all the expenses of proving up?

A. Yes, sir.

Q. For yourself and wife? A. Yes, sir.

Q. So that, as a matter of fact, you received no money and had no money of any kind, either for yourself or for your wife, until you and your wife conveyed and sold the land?

By Mr. WALSH.—We object to that as being leading.

A. I will answer it if you want me to.

Q. Well what is it?

(Testimony of Edward D. Doney.)

A. I borrowed the money.

Q. Yes, but answer that question that I put to you.

A. No, sir; I had money before that; I borrowed the money.

Q. Just read the question and answer just a moment before, Mr. Cooper, please, to where he made arrangements with Mr. Faust to pay all expenses and to pay for the land. (The matter referred to by counsel was read by the stenographer.)

Q. You said that you made arrangements with him to pay all expenses and to pay for the land, Mr. Doney?

By Mr. WALSH.—We object to that as being leading.

Q. And he did it?

By Mr. WALSH.—We object to that as being leading.

A. Well, you will see in the first place that I told him that if he would loan me the money to prove up on my land I would take up a timber claim.

Q. But he paid the money himself into the land office?

A. I suppose he did.

Q. Both for yourself and your wife? A. Yes.

Q. And he paid all the expenses?

By Mr. WALSH.—We object to that as being leading.

A. Paid all—of course, he paid all the expenses as I considered, borrowed the money to pay it.

Q. And after he had paid all the expenses, and paid the purchase price, who received the receiver's final receipt?

By Mr. BICKFORD.—We object to that as irrelevant and immaterial and hearsay.

(Testimony of Edward D. Doney.)

A. He did this just the same, as I supposed. Mr. Faust had it. I told him to handle my business, and he got it.

Q. He got it, did he? A. Yes, sir.

Q. Then you and your wife went home?

A. Yes, sir.

Q. And what did you say that you did during this month that followed after you had proved up, and before you sold the land to Cobban?

A. After I proved up—let us see, proved up—I don't know; I suppose I was working on the ranch. I suppose it was when I was haying. It was in July, August or September, somewhere along there.

Q. What is that?

A. I understand it was when I was haying. That was in July or August, after I went to working on the ranch. I worked for different ones sometimes. One thing sometimes, and sometimes another.

Q. Now the question that I put to you is this: what did you do during the month after you and your wife had made your final proof about selling this land?

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial, and further that it is leading. The witness has not testified that it was a month after he made the final proof that he sold the land. But on the contrary he testified that on his way home Mr. Faust made him a proposition to give him twelve hundred dollars for the timber and the two pieces of land entered by himself and his wife under the

(Testimony of Edward D. Doney.)

Stone and Timber Act, and that shortly afterwards he concluded to accept the offer, and told Mr. Faust so.

A. Well, my wife don't have anything to do with it. I inquired around about selling the timber land. I was not going to do any better, and so I went to Mr. Faust's and told him I would take twelve hundred dollars for it.

Q. Who did you go to? A. Mr. Faust.

Q. You were inquiring around, but who did you go to?

A. Well, we talked around in different places, in quite a number of places. I can't remember the places, or who the parties were. There were quite a number of them.

Q. Can you name one particular person who was buying land to whom you went during this month?

By Mr. WALSH.—He has told you that already.

A. Well, I talked to Mr. Faust.

Q. Well, besides him?

A. Well, I can't remember now who it was. I could name most anybody around Ovando, and they would be talking about it all right. It might have been Bob Dixon that talked to me about it.

Q. That is the saloon keeper? A. Yes, sir,

Q. What did you say to him?

A. Well, I spoke about taking up timber land and he said he understood we were getting a hundred dollars for the claim, and I told him I didn't know that or I wouldn't have bothered to do anything, to take up a timber claim.

Q. But you did finally sell it to Mr. Cobban?

(Testimony of Edward D. Doney.)

A. Well, I sold it, but I don't know whether he was in it or not.

Q. You got a hundred dollars for it?

A. I don't know whether I did or not: I got twelve hundred dollars for my wife's timber claim and my own.

Q. How much money did you receive?

A. Twelve hundred dollars.

Q. Did you receive it in cash or in a check?

A. I didn't receive any check.

Q. Did you receive money? A. Yes, sir.

Q. How much money did you receive?

A. Twelve hundred dollars.

Q. You swear that you received twelve hundred dollars? A. Yes, sir.

Q. What do you mean by that?

A. Twelve hundred dollars.

Q. Who paid you the twelve hundred dollars?

A. Faust.

Q. Faust himself? A. Yes, sir.

Q. Paid you twelve hundred dollars?

A. Yes, sir.

Q. In cash?

A. In cash. Just left it at his store for me to use as I wanted it for necessities and I bought things and gave him an order on my account for goods as long as the twelve hundred dollars lasted and more, too, I suppose, if I had asked him.

Q. Did you ever receive any money yourself at the

(Testimony of Edward D. Doney.)

time, or did you receive any money at the time yourself in cash? A. No, sir.

Q. You did not?

A. No, sir, I did not. I didn't ask him for it. I got money at different times; if I wanted twenty or twenty-five or fifty dollars or anything of that kind I went and got it. It was over a year before I got all of it. Not that I couldn't get it if I wanted it. I could have got it if I demanded it.

Q. When you and your wife conveyed this land to Mr. Cobban I ask you now did you on that date either of you to your knowledge receive any money?

By Mr. WALSH.—We object to this for the reason that it has been answered at least four separate and distinct times and each time in the same way.

Q. You say you did not? A. No, sir.

Q. When was the first time after you sold the land to Mr. Cobban that you received from Jakways and Faust any money?

A. Well, just—that is a pretty hard question for me to answer. You see I told you that whenever I wanted any money I could go and get it. That it has been a custom for me to get money there; if I wanted that money why I could get it. My account has been running that way right along. I don't know whether I got it off the timber or on my face or what. That is just the circumstance.

Q. You don't know whether you were getting this

(Testimony of Edward D. Doney.)

money from Jakways and Faust on the timber or on your face? A. No, sir.

Q. It might have been given to you in goods?

A. Yes.

Q. You might have been getting it on your face?

A. Oh, I suppose I was getting it on my account.

Q. Getting it on your account? A. Yes, sir.

Q. Or on your face? A. Yes, sir.

Q. Well, how much money did Jakway and Faust loan you on your face?

A. I don't know, a great many dollars. I paid out a good deal at different times. I paid him a good deal, too, and I used to get money of him occasionally.

Q. I mean since you conveyed this land to Cobban?

A. Paid me twelve hundred dollars.

Q. Well, I asked you what was the first sum of money you received the first time after you and your wife conveyed the claims?

A. I didn't get that. I didn't get a dollar more; it was left to my account and I got instead what I wanted. He is a merchant and we deal there and buy what things we want there, and if I wanted money the money was left there for my use, and it might have been two or three weeks. I don't know whether I got it until one or two or three weeks after that.

Q. It was two or three weeks, was it?

A. Well, I don't know whether it was two or three weeks or what it was.

(Testimony of Edward D. Doney.)

Q. Well, when was the first time that you asked him for money?

A. Well, it must have been six weeks after that that I bought a horse and wagon and issued an order for it.

Q. Who did you issue the order to?

A. I issued the order to Bob Dixon.

Q. You bought a team of horses from the saloon-keeper, Bob Dixon, and gave him an order on Jakways and Faust? A. Yes, sir.

Q. How much did you issue the order for?

A. For a hundred and sixty-five dollars.

Q. For a hundred and sixty-five dollars?

A. Yes, sir.

Q. And that was about six weeks after the sale of the claims, you think? A. I think so.

Q. Well, now name the next time.

A. Oh, well, I can't do that.

Q. When was the second time?

A. I don't know, "good gosh." I had an account there and I didn't keep account of all the little items I ordered. I would have to get his accounts. I have got quite a few. It didn't lay there idle very long before I got somethings out of it.

Q. Well, when was the third time?

A. Well, I couldn't tell that. I couldn't tell at all. I couldn't tell when I got it, I am sure.

Q. Well, now state to the court when it was that either you or your wife received any money from Jakways and Faust on this account except this hundred and

(Testimony of Edward D. Doney.)

sixty-five dollars, on the order that they recognized and honored.

A. That I received any money—why, the only time I received any money was on the timber land as I said before. But I couldn't tell when I got anything else there. I couldn't tell the date of it. I know I got it pretty soon. I got a little money off and on all the time.

Q. Can you name any sums that you received?

A. Well, I cannot name all, but I can tell you one.

Q. Well, what was it?

A. Well, I got fifty dollars another time.

Q. Well, when was that?

A. I couldn't tell you. I couldn't tell you that.

Q. Well, how long after this sale?

A. Well, I guess about three months.

Q. Well, name another one. A. That is all.

Q. That is, this hundred and sixty-five dollar order and the fifty dollars in cash? A. Yes, sir.

Q. And you cannot name another?

A. Well, I got a dollar's worth of sugar once in a while and things of that kind, and a thousand dollars wouldn't last very long after buying machinery and so on for a place like that and a large family.

Q. Well, besides this order and this fifty dollars in cash and this dollar for a sack of flour, etc., sugar, what else can you name? A. That is all. I got it all.

Q. What is that?

A. I got the twelve hundred dollars all right.

(Testimony of Edward D. Doney.)

Q. But you cannot name the time when you got it?

A. No.

Q. Or how you got it all and what you got?

A. Yes, I got it at this store. I got it in groceries and things of that kind. I couldn't tell and nobody else could tell. That is, I couldn't tell in my circumstances. And nobody else could tell without having the accounts.

Q. Then you received from this store since the fall of 1899 a thousand dollars' worth of groceries?

A. Yes, sir, more, too, I guess. Not groceries altogether, but other things that I got.

Q. Well, what other things?

By Mr. BICKFORD.—Well, he has told you that he got fifty dollars in cash and gave an order for a hundred and sixty-five dollars for a team of horses.

Q. What other things beside groceries?

A. Well, they keep nearly everything in those stores, shoes and such things. I suppose that was included. I dealt at his store and I don't know but it was quite a while before I took it all, anyway over a year ago I guess it was when I got it all.

Q. You have now named to the best of your knowledge the way that you got this twelve hundred dollars?

A. Yes, sir.

Q. You took it all out of the store in one way or another?

A. Yes, I took it out of the store more for goods than I did in cash. That is just the way it goes.

Q. No, sir, it appears that you on the fourteenth of

(Testimony of Edward D. Doney.)

August, 1899, were here with your witnesses to make your final proof?

A. Might be all right, I don't know, something around that time, September, I thought it was.

Q. It appears from the papers in evidence in this case that it was on the 14th day of August, 1899?

A. Well, it may be so.

Q. And it appears from the certified copy of the deed that is in evidence in this case that three days afterwards, after you were here, that you and your wife—

By Mr. BICKFORD.—I want to make an objection to the paper that is shown to the witness.

By the EXAMINER.—Let the counsel ask the question before you put in your objection.

Q. —that you and your wife conveyed your stone and timber claim to Mr. Cobban?

By Mr. BICKFORD (Continuing).—The objection that I wish to make is that the paper shown by counsel to the witness is not the paper by which any stone and timber claim, not the land transferred by the witness on the witness-stand was conveyed to any person. The paper described, and the one that counsel has in his hand is property which the witness acquired under the homestead law, and is not covered or described in the bill of complaint filed in this case, and therefore it is irrelevant and immaterial and the paper referred to by

(Testimony of Edward D. Doney.)

counsel can have no bearing whatever upon the questions at issue in this case.

Q. Now, then, in answer to that I read from a certified copy of these deeds: "This indenture made this 17th day of August in the year of our Lord one thousand eight hundred and ninety-nine, between Edward D. Doney and Martha M. J. Doney, husband and wife of Ovando, Deer Lodge County, Montana, the parties of the first part, and R. M. Cobban of Missoula, Missoula County, Montana, the party of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of fifteen hundred and no/100 dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain, sell, convey and confirm unto the said party of the second part, and his heirs and assigns forever, all the timber suitable for saw or tie purposes, growing or being upon the east half and the northwest quarter of the northeast quarter and the northeast quarter of the northwest quarter containing one hundred and sixty acres more or less according to the government survey, and all in section twenty-four, township fifteen, north range twelve, west, together with the right of removal at any time, within ninety-nine years from the date hereof. Also conveying to second party herein or his assigns the right of way through, over and upon the said land for the removal of the timber growing upon this or other lands

(Testimony of Edward D. Doney.)

or for the purpose of inspection, examination or care of said timber."

Now, on this same day, this 17th day of August, when he conveyed his timber right, the timber upon his homestead, he and his wife on this same day conveyed their land that they got under the stone and timber claim.

By Mr. BICKFORD.—We move to strike out the statement of counsel as irrelevant and immaterial. We submit to the court at this time that the papers that he proposes to read have heretofore been introduced in evidence in this case, and we object to the further introduction of that deed at this time for the reason that they encumber the record, and it is unnecessary and wholly irrelevant to the issues in this case.

By Mr. WALSH.—I desire to submit to the court that there is no good reason why we should sit here and waste away time listening to Mr. Maynard reading these papers. It is no part of the examination of the witness.

By Mr. MAYNARD.—You don't have to listen to it if you don't want to.

By Mr. WALSH.—The province of the Examiner, as I understand it, is to listen to the testimony of the witnesses and not for the Examiner to listen to counsel reading.

By the EXAMINER.—The counsel have the right to put upon the record their reasons for asking the questions and their reasons against asking the questions so

(Testimony of Edward D. Doney.)

that the court, which will ultimately pass upon these matters may have an intelligent view of the subject.

By Mr. MAYNARD.—I simply offer in evidence without reading and ask that the stenographer copy into the record the parts of the two deeds to Mr. Cobban made by Mr. Doney and his wife. One is on the 17th day of August, and is as follows: "This indenture made this 17th day of August in the year of our Lord one thousand eight hundred and ninety-nine between Edward J. Doney and Martha J. J. Doney, husband and wife, of Ovando, Deer Lodge County, Montana, parties of the first part, and R. M. Cobban of Missoula, Missoula County, Montana, party of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of one thousand and no/100 dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain, sell, convey and confirm unto the said party of the second part and to his heirs and assigns forever, all the real property situated in Deer Lodge County, State of Montana, described as follows: The southeast quarter of the southwest quarter, the southwest quarter of the northwest quarter, and west half of the southwest quarter of section No. two, in township number fifteen, north of No. twelve, west of the principal Montana meridian in Montana, containing one hundred sixty acres more or less; also, deed of Martha

(Testimony of Edward D. Doney.)

M. J. Doney, and Edward Doney, wife and husband, as follows:

This indenture made this seventeenth day of August in the year of our Lord one thousand eight hundred and ninety-nine, between Martha M. J. Doney and Edward Doney, wife and husband, of Ovando, Deer Lodge County, Montana, parties of the first part, and R. M. Cobban, of Missoula, Missoula County, Montana, party of the second part witnesseth: That the said parties of the second part for and in consideration of the sum of one thousand and no/100 dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all the real property situated in Deer Lodge County, Montana, described as follows:

North half of the northeast quarter of section number ten, in township number fifteen, north of range numbered twelve, west of the principal Montana Meridian, in Montana, containing eighty acres, more or less."

By the EXAMINER.—We will now take a recess untill two o'clock P. M.

HENRY N. BLAKE,
Examiner in Chancery.

Wednesday, March 5th, 1902, 2:00 P. M.

Hearing resumed.

The witness EDWARD D. DONEY, called for further examination, testified as follows:

Cross-examination.

(By Mr. BICKFORD.)

Q. As I understand you, Mr. Doney, you have lived in this country where you now live for some years?

A. Yes, sir.

Q. Has your occupation been that of a farmer during the time you have lived in the Blackfoot country all the time?

A. Why, the time as much as I could as I could stay at home.

Q. You have occasionally worked at other occupations? A. Yes.

Q. Ever worked in the lumber woods any?

A. I did.

Q. It was in the spring or summer of 1899 that you made your timber and stone entry, as I remember you stated? A. Yes, sir, I think so.

Q. Did your wife make an entry the same time that you did? A. Yes, sir.

Q. How many acres of land were embraced within her entry? A. Eighty acres.

Q. How many acres of land were embraced in your own entry? A. One hundred and sixty.

Q. Did this land adjoin the land which you had entered as a homestead pre-emption? A. No, sir.

Q. How far was it from that land.

(Testimony of Edward D. Doney.)

A. Three miles and a half.

Q. In which direction?

A. Northwest, about.

Q. You say you had been over this land before?

A. Yes, sir.

Q. Your wife had also been over it at other times, hadn't she? A. Yes, sir.

Q. In other words, the land was so near to your own home that you were acquainted with prior to having made a timber and stone entry upon it?

A. Yes, sir.

Q. Do you remember of the circumstances of your wife having made an affidavit subsequent to the time of her having filed proof in which she stated she had again gone over the land and made an examination of the land?

A. Do you mean before the—

Q. After the final proof and before the title was issued? A. Whether she had went on the—

Q. Whether she made an affidavit to the effect that she had gone on the land to examine it again?

A. I think she had.

Q. You think she made such an affidavit?

A. I think so.

Q. Do you know why she happened to make the affidavit? A. No, sir.

Q. Passing from that, had you ever made a timber and stone entry before this one, Mr. Doney?

A. No, sir.

(Testimony of Edward D. Doney.)

Q. Had your wife ever made a timber and stone entry before? A. No, sir.

Q. And that land that you entered under the Timber and Stone Act, was it chiefly valuable for the timber it contained thereon? A. Yes, sir.

Q. Was it valuable for agricultural land as it then was? A. No, sir.

Q. Was it valuable for any other purpose other than the timber contained upon it?

A. I could not tell as it was, it was on the side slope of a hill, mountain.

Q. No place to irrigate it was there?

A. No, sir.

Q. Could not raise agricultural crops even if it was clear?

A. No, sir, on account of stones.

Q. It was a rocky, stony piece of land on the hillside?

A. Yes, sir, on the hillside, that is right.

Q. Your own timber and stone land and that of your wife, adjoined, didn't they? A. Cornered.

Q. Didn't join sideways? A. No, sir.

Q. You know of you wife having gone on to and over this land prior to the time of her making the timber and stone entry, didn't you? A. Yes, sir.

Q. You yourself had been over this land frequently?

A. Yes, sir, a good many times.

Q. What was the occasion of your going over the land?

(Testimony of Edward D. Doney.)

A. Hunting and showing the way to different ones over them woods.

Q. Is it a heavily timbered country up in this vicinity? A. Yes, sir.

Q. I want to ask you when it was that this land was surveyed or at least when it came into the market so far as the government was concerned?

A. It was February that it was received, 1899, it was in February sometime, about, that is the time I think it was, 1899.

Q. It was the February prior to your filing upon the land? A. Yes, sir.

Q. How soon thereafter was it that you looked at the land with the idea of entering 160 acres under the timber and stone entry?

A. Why, I don't know as I went up there particularly for that, though I knew well enough without it.

Q. You knew at that time, didn't you, that there was nobody else on the land or living on it?

A. There was nobody living on it, I was sure of that.

Q. Were you not also sure that there was nobody who had any improvements on this land?

A. Yes, sir.

Q. How about your wife, was she also familiar with the land?

A. Well, she ought to be, she used to go there picking berries etc., by that I thought she must be, I did not as much want to show her the land as I did to describe where she would know she went there.

Q. And in this way she had become familiar with

(Testimony of Edward D. Doney.)

the land that she afterwards entered under the timber and stone entry? A. Yes, sir.

Q. Now, passing to the question of your dealings with Jakaways & Faust, how long have you dealt with them, about?

A. Why, it must be ten years.

Q. It was not an unusual occurrence, was it, for you to borrow money off them? A. Not at all.

Q. It was not an unusual thing for you to obtain credit at their store? A. Not a bit.

Q. You had done it sometime prior to this timber and stone transaction?

A. About all the time I have dealt with them.

Q. As a matter of fact when you borrowed the money with which to pay for this land of Jakaways & Faust, it was a fact that this money was simply charged to you on their books?

A. That is the way of it.

Q. Then when you sold the land you were credited upon their books with the $1,200.00 you testified to?

A. Yes, sir.

Q. That is the way the transaction was had, wasn't it? A. Just exactly.

Q. Then after that time you obtained money, goods and credit at the store the same as you had done before that time? A. Yes, sir.

Q. I do not suppose you would be able to tell us when it was that the account was exactly balanced could you?

(Testimony of Edward D. Doney.)

A. No, sir, I could not, because I went right when the money was paid and taken up, and made payments as usual.

Q. As a matter of fact the account is still running in the store of Jakaways & Faust, isn't it?

A. Yes, sir.

Q. You were present at the time when your wife made final proof, were you not, Mr. Doney?

A. Yes, sir.

Q. You were in the land office, as I understand it, Mr. Doney, at the time when your wife gave her testimony and it was reduced to writing and signed by her?

A. Yes, sir.

Q. Question number five is, "When and in what manner was such inspection made," meaning looking at the land? answer, "I was over the land in the summer of 1898, and many other times, walked over it"; that is what the answer of your wife was to that question. You heard her give that answer to that question, did you not? A. Yes, sir.

Q. Now, afterwards, after the 14th day of August, 1899, and on the 24th day of February in the year 1900, that would be the following February after August, your wife made the following statement, evidently supplemental to that answer: "Martha M. T. Doney, being duly sworn, upon oath says, in relation to her timber and stone entry, number 1634, made by her on the 14th day of August, A. D. 1899, for the north half of the northeast quarter of section 10, township 15, north of

(Testimony of Edward D. Doney.)

range west that she made a special examination of the above-described land on the 10th day of August, 1899, and that the character of the land was then and is now chiefly timber land being valuable for no other purpose, on account of the dense growth of timber thereon, and the high and rocky and rolling lay of the ground." Do you know of her having made this affidavit, Mr. Doney?

A. Was that down at Jakaways & Faust's?

Q. Yes, sir, it was before Charles A. Jakaways, United States Commissioner? A. Yes, sir.

Q. You know that she made such an affidavit?

A. Yes, sir.

Q. I wiil ask you to state whether or no you knew the character of this ground on the 10th day of August, 1899? A. I did.

Q. What was it chiefly valuable for at that time?

A. Timber land, stone, heavily timbered.

Q. It was chiefly valuable for the timber contained thereon? A. Yes, sir.

Q. Then the affidavit made by your wife was correct? A. Yes, sir.

Q. The further question was asked your wife on that final proof, "Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner with any person whomsoever by which the title which you may acquire from the government of the United States may inure in whole or in part to the benefit of any person except

(Testimony of Edward D. Doney.)

yourself," to which she answered "no." Was that correct, Mr. Doney? A. Yes, sir.

Q. This question was asked her, "Do you make this entry in good faith for the appropriation of the land exclusively to your own use, and not for the use or benefit of any other person?" to which she answered, "I do." Is that correct, Mr. Doney?

A. Yes, sir.

Q. This question was asked her? "Has any other person than yourself, or has any firm, corporation or association, any interest in the entry you are now making, or in the land or in the timber thereon?" The answer is "No." Was that answer correct?

A. Correct.

Q. Those answers were made by your wife upon her final proof? A. Yes, sir.

Q. At the time when she made her first entry to the land, has she at that time made any contracts or agreements by the terms of which the title which she might thereafter acquire to the land would inure to the benefit of anybody else? A. No, sir.

Q. So far as you know?

A. So far as I know.

Q. As I remember your testimony in chief, you stated in your testimony in chief that you and your wife made your final proofs on the same day?

A. Yes, sir.

Q. At the time when you made your first entry of the land on May 27th, you stated to the land office that the

(Testimony of Edward D. Doney.)

land was chiefly valuable for the timber on the land, and that you did not make it for speculation, but in good faith to appropriate it to your exclusive use and benefit, and that you had not directly or indirectly made any agreement in any way or manner with any person whomsoever by which the title which you might acquire from the government of the United States might inure in whole or in part to the benefit of any person except yourself. That was correct, was it? A. Yes, sir.

Q. There was no contract outstanding at that time by which the land or the title to the land should pass to any one else? A. No, sir.

Q. Then, on your final proof you were asked this question, "Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner with any person whomsoever by which the title which you may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except yourself?" in answer to which you say, "I have not." Was that answer correct? A. Yes, sir, correct.

Q. The following question was asked you, "Do you make this entry in good faith for the appropriation of the land exclusively to your own use, and not for the use or benefit of any other persons?" The answer is, "I do." Was that answer correct? A. Yes, sir.

Q. The further question was asked you, "Has any other person than yourself, or has any firm, corporation

(Testimony of Edward D. Doney.)

or association any interest in the entry you are now making, or in the land or in the timber thereon?" Your answer is, "No, sir." That was correct, was it?

A. Yes, sir.

Q. Now, with reference to the time when this transfer or sale of this land was made, can you give the exact day when the sale was made, Mr. Doney?

A. I cannot, it is so long ago that I could not remember exactly.

Q. You said, I believe, this morning, it was something in the neighborhood of a month after the time when you made your final proof?

A. I think so, I don't know how long it is.

Q. Have you thought about it since; have you had any occasion to change your mind with reference to that?

A. I think I might be mistaken, I have been thinking a good deal about it since. It surprised me when it was.

Q. Are you prepared to say now just at that time it was that you made this transfer, after looking at the papers, and examining any of the documents on file in this case?

A. Well, it may be a good deal shorter time than I thought it was, the way the papers is, it may be it was sooner than that.

Q. You have made no personal memorandum by which you can fix the date?

A. No, sir, I am very careless in a thing of that kind.

Q. Are you prepared to say, then, at this time just when it was that this transfer of the land was made?

(Testimony of Edward D. Doney.)

A. Well, I could not really remember exactly what date it was.

Q. I will ask you to state whether or no it was after the time when you had paid your money into the land office and had obtained your final receipt?

A. It was after we got the final receipt.

Q. Before getting your final receipt had you ever made any contract or agreement to sell the land at all?

A. Not at all.

Q. Had you ever had any talk with anybody about selling the land prior to that time?

A. No, sir.

Q. I believe you said in your examination in chief, Mr. Doney, that Mr. Faust got your final receipt at the land office? A. I think he did.

Q. Did he also get your final receipt for the homestead claim that you made proof on?

A. Yes, sir, I think he did.

Q. He was then acting as your agent or attorney in this matter? A. Yes, sir, he is a notary public.

Q. I will ask you to state if he generally does business for people in that sort of a way?

A. Quite a lot of it.

Q. Quite a lot of that sort of business?

A. Yes, sir.

Q. Now, when was it that Faust first made the proposition to you to buy this land and pay you $1200.00 for it, the timber?

(Testimony of Edward D. Doney.)

A. Well, it was pretty soon after I had proved up on it.

Q. He had never made any proposition of that kind to you before you had proved up on it?

A. No, sir.

Q. When was it that you talked with the representative of the Blackfoot Milling Company with reference to that matter?

A. I believe it was when I was in Helena, after I had been at the land office here.

Q. After you had proved up on it?

A. Yes, sir.

Q. Before you had returned home? A. Yes, sir.

Q. You did not make any agreement with him about the land or the timber?

A. He did not seem to care, and I said very little to him.

Redirect Examination.

(By Mr. MAYNARD.)

Q. Mr. Doney, just tell me your route home from Helena all the way? A. Sir?

Q. Tell me what course you took to go home?

A. West.

Q. When you go home now will you go home the same way that you did when you were here before?

A. Yes, sir.

Q. What is the route, you go from here to Missoula?

A. Go from here to Drummond.

Q. Then where do you go?

(Testimony of Edward D. Doney.)

A. I take the stage to Ovando.

Q. And go from here to Drummond by rail?

A. Yes, sir.

Q. Then from Drummond to Ovando by stage?

A. Yes, sir.

Q. How far is it from Drummond to Ovando?

A. I believe they call it 45 miles the way they go there.

Q. How far is your home from Ovando?

A. Five miles.

Q. How long does it take?

A. Why it takes a day from Drummond.

Q. From here, I mean?

A. Well, if I start from here at noon I get there the next morning; I have got to get there the next morning to get started, so if I get there at eight in the evening I would get there sooner than if I started in the morning.

Q. That would be two days, then?

A. Two or three days.

EDWARD D. DONEY.

Subscribed and sworn to before me this sixth day of March, 1902.

HENRY N. BLAKE,
Examiner.

GEORGE DILDINE, a witness called on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Your name, please?

A. Well, my name is George Dildine.

Q. How old are you?

A. I will be 45 years old the 30th day of this month.

Q. Where do you live? A. I live in Missoula.

Q. In the village?

A. Well, it is incorporated; it is called the city of Missoula now, they are incorporated down there.

Q. Are you married?

A. Yes, I am accused of being married.

Q. Do you know what your wife's name was before you were married?

A. Yes, her maiden name was Emma J. Jameison, that is her name that I got acquainted with first.

Q. Is she a sister of Albert Jameison?

A. Yes, sir.

Q. What business do you follow?

A. I follow the building, contracting business.

Q. That is, you are a carpenter?

A. Well, I take a job from start to finish; if a man wants me to put up a job, I put up the whole thing.

Q. Are you a carpenter?

A. Carpenter by trade, forced into it.

Q. Why?

(Testimony of George Dildine.)

A. Because the old man was a carpenter, could not help myself.

Q. Has he forced you to do all the things you have done since you got to be a man?

A. No, he turned me loose.

Q. How long have you been a carpenter?

A. I think I started in with the old man when I was about 15 years old.

Q. You refer to your father, I suppose.

A. My father, yes.

Q. Have you carried on the trade of carpentering except in Missoula, anywhere?

A. Yes, I have worked in other towns besides Missoula; I have worked in Kansas City, I have worked in Pennsylvania; worked in Missouri; I have worked in Idaho; I have worked in Montana, that is, I have worked in Great Falls; I was over there in Great Falls some few years ago constructing a building over there.

Q. How long do you say you have lived now in Missoula? A. Ever since 1888.

Q. What property have you?

A. Well, I have got several pieces of property.

Q. Describe the real estate first?

A. What do you mean, the numbers of it? I could not give you the numbers of the lots I own, I can tell you how many I own; I am paying taxes on them.

Q. Well go on?

A. Getting rent on some of them.

Q. Go on?

(Testimony of George Dildine.)

A. I have got one house over in South Missoula there that Mr. Stoddard lives in, I own that.

Q. What house is that?

A. It is the house Stoddard lives in, I don't remember the numbers of the lots, it is built on two lots.

Q. A house and two lots there?

A. Yes.

Q. Do you own that?.

A. I own it.

Q. In your own name?

A. In my own name.

Q. No incumberance on it?

A. I think there is about probably $800.00 incumberance on that place.

Q. How much do you say its present cash value is?

A. I do not want to put it in now to pay taxes on it, I would take $4000.00 for it, but would not tell the assessor that.

Q. That is, you desire to cheat the government then by not informing the assessor as to its value?

A. I do not mean that.

Q. What do you mean?

A. I mean I would take $4000.00 for the place.

Q. What do you mean by saying you would not want the assessor to know that?

A. Simply because I do not want to be taxed on $4000.00.

Q. In other words, you don't want to pay taxes on what it is worth?

(Testimony of George Dildine.)

A. No, what I would sell it at.

Q. What is your next piece?

A. I own the place I live on, 144 Tolle Avenue, and the next, that place there.

Q. How much is that worth?

A. Well it is probably worth $1200.00.

Q. How much is that mortgaged for?

A. It is not mortgaged for anything.

Q. That is your homestead?

A. That is where I live.

Q. You claim that as your homestead?

A. Homestead —I paid for it, I did not take it up, I bought it, no homestead, just simply bought it and paid for it.

Q. You live there with your family then?

A. Yes, sir.

Q. What other place have you got?

A. I have got another place, that is about, I think it is three lots from there.

Q. A vacant lot?

A. No, it is not a vacant lot, house on it.

Q. What is it.

A. House and lot.

Q. How much is it worth?

A. I don't know exactly what it is worth, it is for sale to any man that wants to buy it.

Q. How much?

A. I haven't set any price on it, it is bringing me

(Testimony of George Dildine.)

$20.00, but if a man came along I would take most any old price for it, if it suited me.

Q. Is that incumbered?

A. Not a bit.

Q. What else have you got?

A. Well, I have eleven acres up Rattlesnake Creek there.

Q. Is that improved?

A. I have improved it in the way of a couple of little temporary little buildings, setting out between five and six hundred fruit trees, some apple trees, some plums, and some cherries, I have been contemplating I may be old some day, you know, and thought perhaps by the time I got old them trees would be as old as I would be, pretty near, and come in handy.

Q. What else?

A. Well, they are not incumbered.

Q. Well, go on—what else?

A. Well, I have got some other lots.

Q. State it all, go on—what is it?

A. I have got five other lots over west of there, no particular improvements on them.

Q. What else?

A. Well, I and my son have got another lot down on South Higgin's Avenue that I bought for a mere speculation.

Q. Bought that for speculation?

A. Yes, I thought I would press the boy into investing his money, show him he might make an investment

(Testimony of George Dildine.)

some day and come out all right; the boy put in $100.00 and I put in $25.00 to encourage the boy; we might need it for shop purposes; we need storage—something like that.

Q. Then you bought some real estate when you took up the stone and timber claims, didn't you?

A. I must have; I paid for it; I paid all they asked; everybody that presented a bill, I paid it.

Q. Do you remember your taking up a stone and timber claim? A. Yes, sir.

Q. And your wife taking up one with you?

A. I could not say she took up one at the time I did.

Q. Are you able to say whether she did not?

A. I cannot say.

Q. Cannot say?

A. Can't state the day she took up one.

Q. Why can't you remember that?

A. Lots of other transactions have been more sensational than that, lots more sensational.

Q. That you have been engaged in? A. Yes.

Q. That is the reason you cannot remember when your wife took up her claim?

A. No, I cannot remember the date nor anything about it. She took up her claim on her own responsibility.

Q. You didn't have anything to do with it?

A. Nothing any more than I told her if she wanted

(Testimony of George Dildine.)

to take up a claim I would furnish her the cash to do it with.

Q. Now, you go on and state, Mr. Dildine, in your own way, the facts and circumstances connected with your taking up this claim? A. Why I did it?

Q. From the beginning, all about it?

A. How it happened I took it up?

Q. Tell it in your own way—the simple truth?

A. I took it up for my benefit, I did not take it up to lose; Albert Jamieson was locating at that time, said he was down there, came there and stopped there several times during the month, he would come down there and stop.

Q. At your house?

A. At my house and stay there all night, that is, when he was not out, come back there when he did come; so he says to me—

Mr. BICKFORD.—We object to the conversation between the witness and Albert Jamieson.

A. (Continuing.) He says, "There is a Wisconsin lumber company going to locate up there close to us; they are going to put in a big mill"; that is the way he told me, and he says, "I believe you could make some money if you would go up there and locate a piece of timber." "Well," I says, "I will think it over." I thought it over a few days; didn't think anything more about it; he came back some time after that, and he says, "Have you made up your mind as to whether you

(Testimony of George Dildine.)

will locate a piece of timber or not." I says, "I am afraid it will cost me a whole lot of bother, and fool away a lot of time; probably I would put money in there, and will not during the time bring me interest for a good many years." "Oh, well," he says, "It is all right; if they get up that new mill you can dispose of it, and the mill is going in; that is an assured thing." "Well," I says, "you can pick me out a piece of timber," and he was talking about it. I happened to be up there a couple of years before then and I know the lay of the ground there, and he says, "There is a place west of the house where we live; it was up on that bunch, piece of timber, you can get hold of it." I says, "Give me the numbers of it and I will go down and file on it." He furnished me a plat and I went down. I says, "I don't know how to transact this business, I don't know who to go to."

Q. Where was this conversation?

A. My house in Missoula, it all happened in Missoula, and he furnished me a plat of the ground one day and I took it and went down and filed on it; I had been on the ground before and knew it, and some time afterwards I went up to the piece; to my knowledge I went up and went over the ground; I and my wife went up in that part of the country, hooked up and drove up, looked it over, made an advertisement of it to see if anybony else made any claim on it; nobody showed up to contest it or anything.

Q. Well, go on?

(Testimony of George Dildine.)

A. Well, it ran along for sixty days, it takes some time for sixty days, if it is the proper time given to prove up, when we proved up, why I certainly must have paid them the money because they gave me a patent to it. That is the full extent of my knowledge of it.

Q. Have you told the story just as it is and all that you remember?

A. All that I remember about the story.

Q. When the sixty days were up after you filed, do you remember of going to the land office?

A. Well, yes, I remember of being in the land office, I remember that I went there.

Q. Do you remember who went with you?

A. No, I don't think there was anyone went with me.

Q. When you went to prove up? A. No, sir.

Q. Didn't you have any witnesses?

A. Yes, sir, I did.

Q. Don't you remember the fact of them being there with you?

A. They were neither of them with me, they all appeared on the same day, I saw them in the town the same day, I saw them in the town the same day they all appeared, each one of us went there one at a time.

Q. What do you mean by that?

A. We were not there at the land office—I mean we were not there at the land office at the same time.

Q. Who do you mean by "we"?

A. Who is "we"? Who is my witnesses, is the propo-

(Testimony of George Dildine.)

sition; Albert Jamieson was my witness and Joshua Gilman.

Q. They were not there with you at the land office?

A. No.

Q. Why didn't you take your witnesses there when you went to prove up?

A. They knew where the place was; they could go there and testify if they wanted to.

Q. If they did not want to, they could stay away?

A. Yes, they knew they were due there that day.

Q. How did they know that?

A. Because they were advertised as witnesses.

Q. But you did not see them there? A. No.

Q. Was your wife there with you? A. No, sir.

Q. She didn't make her filings on that day?

A. I don't think so.

Q. Her final proofs?

A. I don't think so.

Q. Did you afterwards, after you made your final proofs, sell the land? A. Yes, sir.

Q. Who to? A. I sold it to R. M. Cobban.

Q. Whereabouts were you when you sold the land to R. M. Cobban? A. I was in his office.

Q. When did you sell it to him?

A. I think it was only a few days afterwards, that I proved up, found out I had got a bad deal, that I would be out of money if I had money in there, a poor investment to let it lay there three or four years, and instead of having between four and five hundred dollars, I would

(Testimony of George Dildine.)

have twice the amount in there, after I found out I had a bad thing I wanted to drop it; I am always willing to drop anything that is hot.

Q. When did you find out that you had this bad deal?

A. After I found out it was a fake about that Wisconsin milling and lumber company coming in there, what was I going to do with it, the proposition was what was I going to do with it. My wife had made some investigation of it and they says that the Blackfoot Milling Company, they says to her, we have got all the railroad land we want to cut off of, we can cut it off and pay stumpage; we don't want anything to do with it and won't buy it, so I had the money in and I had to get out or else come out a little bit behind, and probably a whole lot in the wind up.

Q. When did you find out that this Wisconsin company coming in there was a fake?

A. Well, when it did not come, sixty days had elapsed from the date I had filed, the time it took for me to prove up, I don't recollect whether it was sixty or ninety days that I advertised it, it didn't show, and it had died down, I didn't know anything about it coming, didn't show up and I knew that I had done wrong, had not placed the money in the right place, I had better benefit myself when I had a chance.

Q. Have you now stated all the reasons that you can give for saying this company was a fake?

A. I don't know that it is a fake; I said probably it

(Testimony of George Dildine.)

was a fake, but it proved it by never, it never materialized, it never came there, never showed up, it may have been a fraud to get me into it; I don't know how it happened; there has been so many things that happen like that in a lifetime.

Q. Then because you found out or believed that this story about the Wisconsin company building up there was a fake, you wanted to drop this matter?

A. I wanted to get out of it; wanted to get my money where I could get some interest out of it; I want to make a living; I want to justify myself and my family; I wanted to make all out of it I could make; I want to keep my money working, and what I can make out of my money I do not have to earn.

Q. You believed the Wisconsin company was to build this mill at the time you took up the land, didn't you?

A. I did. I went into it in good faith; I thought if they went in there, I might log that lumber off there, hire teams and do it, make some money, profit by it, put it to some use, benefit myself.

Q. I show witness his original statement. Do you recognize this statement; that is, the signature here?

A. That is my signature; that is the way it is signed.

Q. That is your signature to this original statement?

A. Yes, sir.

Q. I read from this, "That on the 14th day of October, 1899, George Dildine of Missoula, made application to purchase the west half of the northwest quarter and the north half of the southwest quarter of section 8, town-

(Testimony of George Dildine.)

ship 14, north of range 15 west." This was sworn to before Mr. Hershey on the 14th day of August, 1899.

Q. This is the 14th of August, 1899, that you made this statement, commenced these proceedings; now tell me, Mr. Dildine, whether, in your judgment or recollection, it was in August or September, that you hear that this was a fake?

Mr. WALSH.—The witness has never said he heard it was a fake.

A. Why, I did not have to hear it was a fake; the mill never went in, or it is not there to-day—doesn't it show up on its own face?

Q. Well, when you filed this statement, did you pay the money then? A. When I file[d] the statement.

Q. Made your filing?

A. When I made my filing?

Q. Yes.

A. No, sir; I did not pay for the ground until I proved up.

Q. How long, now, after this filing in August before you came to the conclusion that you had made a mistake and wanted to get out of it?

A. How long was it?

Q. Yes.

A. Well, after I proved up and I found that I had the money in there, realized I would have to be let out of interest of that money there for years before I could get to sell it, the Blackfoot Milling Company did not

(Testimony of George Dildine.)

have to have it; the Wisconsin company wasn't in existence.

Q. When did you find that out?

A. I don't know just when I found it out; anybody could realize; I just realized it; I didn't find it out at all. I considered the matter there, took the thing under consideration.

Q. As a result of that consideration, what conclusion did you come to.

A. I came to the conclusion that the man who would pay me the most for it, I would sell it as soon as I proved up; I came to the conclusion that the man who would give me, if it was a dollar less or a dollar over, he would get that; it was his, because I considered I had made a bad investment.

Q. How did you consider that you had made a bad investment when you didn't have your money in there?

A. Didn't I have the money in?

Q. Didn't you say you didn't pay your money until you proved up?

A. Didn't I state that after I proved up I had considered this?

By the EXAMINER.—You must answer the question; you must not ask him questions. A. I did.

Q. Now, let me understand you: Did you or didn't you come to that conclusion that you had made a mistake before you proved up? A. No, sir.

Q. You didn't come to the conclusion that you had

(Testimony of George Dildine.)

made a mistake, made a bad bargain, until after you had proved up? A. No, sir.

Q. Is that so? A. That is right.

Q. And after you had paid the money in there?

A. Yes, sir.

Q. Now, can you state as to how long it was after you had proved up and paid your money in there that you came to the conclusion that you had made a mistake?

A. Oh, it must have been some three, four or five days. I don't think I sold on the same day.

Q. Are you able to state as to when you did sell?

A. No, I am not able to state when I sold.

Q. Well, what additional information did you have when you proved up, between that time and the time you sold to Cobban? A. Information you mean?

Q. As to the mistake, as to lead you to the conclusion that you had made a mistake?

A. The whole circumstances of the country then. I knew the mill was not going up; I knew that the improvements were not going on in that part of the country, I knew that there were mills going up a hundred miles from there, and I knew by the circumstances of the business of that country that it was not going there.

Q. And you found out all that, all the circumstances of the business after you proved up and before you sold to Cobban?

A. The circumstances brought me to the light, for

(Testimony of George Dildine.)

the simple reason that the improvements never went on, they did not build the mill up there.

Q. And you found that all out after you had made your final proofs, paid your money in, and before you sold to Cobban; is that so?

A. That is a pretty short time—

By the EXAMINER.—Just answer the question.

A. I cannot say that I apprehended all that in that time; I cannot say that I realized.

Q. You did not apprehend this, or any of these facts previous to making final proofs and paying your money in? A. No, sir, I did not.

Q. Because you would not have completed the purchase had you known these facts? A. No.

Q. So, then, you must have found out the facts after you had proved up and paid your money in?

A. Well, I gave it good consideration; I looked the proposition over thoroughly.

Q. Then you came to the conclusion that you had made a mistake?

A. Yes, sir, I did, and I came to the conclusion that if I could do it I would try and sell that place if I lost.

Q. How long a time do you say it was between your final payment and your selling to Cobban?

A. It must have been some three, four or five days, something like that; I did not rush in very much.

Q. What is your best judgment about that?

A. I think it must have been, to my best knowledge, it must have been about three days.

(Testimony of George Dildine.)

Q. Then it must have been during those three days that you heard of these facts which led you to believe that you had made a mistake?

A. I did not have to hear anything; I did not have to hear it. I was living right there, where I could realize whether the mill was being built or not. I could realize that the Blackfoot Milling Company did not have to have it, because they had all of this Northern Pacific timber to cut off of for years yet.

Q. What you could realize at a glance after you had proved up, could not you realize during the 60 days between the time you had made your filing and the time of final proof.

A. I had just as much time then to realize as any other time.

Q. Why didn't you realize something of this kind?

A. I don't know why I didn't; probably I did not turn my attention that way.

Q. Where did you get this money from that you made this purchase with?

A. I don't have any recollection where I got the money.

Q. Have no recollection where you got the money to pay for the purchase price of your entry?

A. No, sir, I do not; I had money, I think, at that time of my own.

Q. Was it your own money?

A. It was my own money.

Q. That you paid for the entry?

(Testimony of George Dildine.)

A. That I paid for the entry.

Q. But you don't know where you got it?

A. No, sir.

Q. Do you know where your wife got her money?

A. I don't know a thing about where she got it.

Q. To pay for her entry? A. No, sir.

Q. Don't know anything about that?

A. I don't know anything about her transaction, only when it came to selling, I says to her, I will not pay interest and leave that money lay in that country up there. I says we will not leave that money up there ond lay out of the interest of that money when we can take that much money and build a house and draw rent.

Q. So you did not give her the money to pay for her interests?

A. I do not have any knowledge whether I gave it to her or not; I have always satisfied her with all the money she asked for.

Q. And you have no recollection as to whether or not you gave her four hundred odd dollars to pay for this entry?

A. I don't recollect anything about it, whether I gave it to her or not.

Q. Well, if you did give her such an amount of money as that, would you be likely now to have forgotten it?

A. Certainly I would. I have transacted a good many thousands of dollars' worth of business since that, and I could not recollect every piece of money I paid out or spent on any proposition; I do not recollect a hun-

(Testimony of George Dildine.)

dredth part of the money I took in last summer or paid out. I have handled over $80,000 last year, and I could not call out of $80,000. I could not name you one figure that I have paid out to any one person unless I would go back and take my receipts for it.

Q. You wish me to understand from your testimony that you knew that your wife, whom you were living with, having bought this timber claim and paid $400.00 for it and over, and still you not know anything about where she got the money?

A. I have no recollection of it.

Q. You have no recollection as to whether you had anything to do with it or not?

A. No recollection whether I had anything to do with it. When it came to settling up, I says that money will never lay there; she did not want to sell; I says I will not pay taxes on that; I am not going to lay out of interest of the money and take chances on forest fires and the likes of that; there is nobody has to have it; she had never brought me up against the proposition to arouse my attention to the fact that I would have to stand and pay out for her.

Q. But you do say that you do remember about the money you paid for your own claim?

A. I do; I remember that I paid for it myself.

Q. For your own claim? A. Yes, sir.

Q. You have no recollection, as I understand it, from whom you got that money? A. No, sir.

Q. Did you get any money from Mr. Cobban?

(Testimony of George Dildine.)

A. No, sir, not until I sold to him.

Q. Did you get any money from Mr. Catlin?

A. No, sir.

Q. For the purpose of making this payment?

A. No, sir, not a bit; never received a dollar of Catlin in my life.

Q. Nor Cobban?

A. I did when I sold to him.

Q. I mean before that?

A. Yes, I did receive a little money, we had a little transaction one time before that.

Q. With Mr. Cobban? A. Yes.

Q. What was that?

A. Three or four years before that.

Q. Nothing to do with this matter?

A. Nothing to do with this.

Q. Had you seen Mr. Cobban at all previous to your going to the land office? A. No, sir.

Q. Nor Mr. Catlin?

A. No, when Albert gave me the numbers of the land, I asked him the way I should proceed to go about the business and he says, Catlin is down there acting as attorney, he will help you, I went down and says, I would like to file on this land, and he says "Alright, I will accommodate you."

Q. Accommodate you how?

A. By going with me.

Q. Did he go with you?

A. He went with me.

(Testimony of George Dildine.)

Q. At the time you filed?

A. At the time I filed.

Q. Did he go with you for that?

A. No, that is the last time he was with me, that is the last time I have any recollection of him ever being with me, that is the last time I was in the office until I proved up.

Q. Had no talk with either of those men or anybody working for Mr. Cobban? A. No, sir.

Q. How much money did you pay in?

A. Well, it was something over $400.00.

Q. That you yourself paid into the land office?

A. Yes.

Q. In what shape was that? A. Currency.

Q. Do you remember where you got it?

A. No.

Q. Do you remember where you took it from that day? A. No.

Q. Don't remember anything about it?

A. Don't remember anything about it, only counting it out to the man, I think I paid it to Ranft.

Q. But you don't remember where you got this money?

A. I have got lots of money that I don't remember where I got it.

Q. Now I understand you that Mr. Cobban nor Mr. Catlin nor anybody loaned you that money?

A. No, sir, they did not.

Q. How long had you had this money?

(Testimony of George Dildine.)

A. I don't remember, I don't remember anything about it, it was a long time ago.

Q. But you paid in the purchase price into the land office?

A. I certainly did or I would not have gotten a patent.

Q. You did not get a patent that day?

A. Certainly not; it took some time for the transaction.

Q. Then when you sold the land to Mr. Cobban, how much did he pay you?

A. I think I sold to him at an advanced price of something like $140.00; I know I have often thought over it; thought I got a pretty good price for it, a pretty fair price. I think I would have sold if Cobban had asked me less than it cost me, I would have sold to him.

Q. From what you had found out in the meantime?

A. Yes, sir, I would have, because it was a bad proposition. I had made a bad bargain.

Q. Did your wife join with you in the deed at the same time?

A. I do not recollect whether she was there at the time or not.

Q. And cannot say whether she joined in with you in deeding her piece or not?

A. I don't recollect anything about that part of it.

Q. And so you say that you got $140.00?

A. A hundred and forty—no, I did not say I got a

(Testimony of George Dildine.)

hundred and forty; I said the advanced price over what I paid, I would get—I think I realized a profit of $140.00, something like that, to the best of my knowledge.

Mr. MAYNARD.—The date of the statement of George Dildine, his entry was the 14th day of August, 1899. I am reading from the original on file and in evidence in this case. The date of the final proof in the case was the 21st day of October, 1899. The date of the sworn statement of Emma Dildine, his wife, was on the 31st day of July, 1899. The date of the final proof in her case was the 7th of October, 1899.

The date of the deed of George Dildine, and Emma Dildine, his wife, to R. M. Cobban was the 7th day of October, in the year of our Lord, one thousand eight hundred and ninety-nine, and the date of the second deed, George Dildine and Emma Dildine was on the 7th day of October, 1899, and acknowledged on the 9th of October, 1899; both deeds were acknowledged on the 9th of October, 1899. And the date of the third deed that was executed by these parties was the 23d day of October, 1899. And the date of the final proof in this case of the George Dildine entry was two days before on the 21st day of October.

Mr. WALSH.—All this we move to strike out as being a statement of counsel and not testimony given by the witness.

Q. Now, then, Mr. Dildine, you made your final

(Testimony of George Dildine.)

proofs on the 21st day of October, 1899, and conveyed two days thereafter to Cobban on the 23d. That is what the deed shows.

Mr. WALSH.—We object to that because the witness was not asked any question.

A. That is what the deed shows.

Q. Now, then, there was two days between the time of your making final proof and conveying to Mr. Cobban. Now, do you want the Court to understand that the knowledge and the feeling of the belief that you had made a bad bargain came to you during those two days? A. It certainly did.

Q. I ask you again, are you able to state any fact or any circumstance of any kind that come to you during those two days?

A. No, I cannot state any facts about the case.

Q. So that you paid your money into the office believing it was a good investment on the 21st of October, and on the 23d day of October, two days thereafter, you came to the conclusion you had made a bad bargain and would be willing to sell it for less than you paid in?

A. Yes, sir, I do.

Q. Now, Mr. Dildine, you had not had any talk with Mr. Cobban at any time previous to your going into his office to sell to him? A. No.

Q. Nor with Mr. Catlin? A. No.

Q. You didn't know anything about the facts that you could sell the land to him and get a hundred dollars? A. No, sir.

(Testimony of George Dildine.)

Q. Never heard of that?

A. I don't know as I did; I don't know as I ever heard it. I could not state that I ever heard it.

Q. Albert had never given you to understand it at any time, that if you took up this land you could sell it at a profit of $100.00? A. No, sir.

Q. Never heard that from him?

A. Never heard that from him.

Q. Nor from anybody else? A. No, sir.

Q. You did hear, of course, that Mr. Cobban was buying these lands?

A. I saw by the records that he was buying lands; I took the papers and read that there had been a few pieces of land transferred.

Q. Conveyances to Cobban were printed in the Missoula papers?

A. Yes; sometimes they were printed in the "Anaconda Standard."

A. That was the only information I had.

Q. That was the only information you had?

Q. That you had seen in the papers, that people were conveying land to Cobban? A. Yes.

Q. And that is what led you to go two days after you made your final proof and paid your money, up to Mr. Cobban's office?

A. I never paid my money in Mr. Cobban's office.

Q. After you had paid the money into the land office on the 21st, you went back there two days afterwards to Mr. Cobban's office?

(Testimony of George Dildine.)

Mr. WALSH.—Objected to because calling for the witness to affirm a statement of counsel and not a statement from the witness; because it is leading, irrelevant and immaterial.

Q. The fact that you had seen these events in the papers?

Mr. WALSH.—Objected to because calling for the witness to affirm a statement of counsel and not a statement from the witness; because it is leading, irrelevant and immaterial.

A. Oh, I don't know as that had anything to do with it; I knew that Cobban had been dealing in real estate there for a good many years; he would buy most anything in that part of the country.

Q. And you went to Mr. Cobban's office under those circumstances?

A. I went there for the express purpose of selling it to him when I went.

Q. You cannot remember whether your wife went with you or not?

A. No, I don't remember who went with me.

Q. You sold to him on that first trip to the office?

A. Yes, sir.

Q. How long were you there?

A. I don't recollect how long I was there.

Q. How much money did he pay you?

A. I don't recollect the amount of money he paid me exactly. I think it was something between six and seven hundred dollars—six, seven or eight hundred dol-

(Testimony of George Dildine.)

lars; something like that. I do not recollect just what it was; I could not remember every piece of money that I ever got.

Q. Can you get any nearer than that to what he paid you? A. No, I cannot tell it.

Q. Whether it was four or five or six or seven or eight hundred dollars?

A. No, I cannot; I know to my best recollection, I sold to an advantage of about $140.00.

Q. Well, are you able to say positively that you received more on that occasion either in check or in cash from Cobban than $140.00?

A. I received the whole amount that I sold to him for that one time.

Q. In money?

A. It was either in money or cash, because he is a man of business, it was either one or the other.

Mr. BICKFORD.—You mean check.

A. It was either check or cash, take it either way; I do not recollect; I have received lots of money from people. I could not tell whether it was check or cash, lots of money this summer; I could not tell whether the man paid it to me in currency or check.

Q. (Mr. MAYNARD.) Will you swear you received more than $500.00 that day? I mean in cash or check?

A. I cannot state the amount.

Q. Just what do you mean by that?

A. Why, I do not remember the amount of dollars.

(Testimony of George Dildine.)

Q. That you received from Mr. Cobban?

A. That I received from Mr. Cobban; I cannot remember the amount of dollars.

Q. Nor anywhere near the amount?

A. I can realize that the man paid me all that was coming to me. I know that I did not make two trips after it.

Q. Are you certain that he did not credit you with the amount that had been paid into the land office and give you the balance?

Mr. WALSH.—We object to that on the grounds that it is cross-examination of his own witness; second, that it is a question that has already been answered by the witness to the best of his knowledge and recollection, and is irrelevant and immaterial.

A. I do not think that he did.

Q. Are you certain that he did not credit you with the amount that had been paid into the land office and gave you the balance? Now, then, I renew that question.

Mr. WALSH.—We object on the ground that it is cross-examination of his own witness; second, that it is a question that has already been answered by the witness, and is irrelevant and immaterial.

Q. What is your answer to that question now?

Mr. WALSH.—We object on the ground that it is cross-examination of his own witness; second, that it is a question that has already been answered by the witness to the

(Testimony of George Dildine.)

best of his knowledge and recollection, and is irrelevant and immaterial.

A. I don't have any recollection like that. I said that I got all that was coming to me, my money back. I don't know what he is talking about.

Q. I understand you now to say that you will not swear but what he did credit you with the amount that had been paid into the land office?

A. Why should he do that?

Mr. MAYNARD.—Please direct the witness to answer the question?

The EXAMINER.—I will not direct him to answer it. You put another question. There has been no testimony whatever here that he and Mr. Cobban had any kind of an account, that he was credited upon any account, or anything of that kind. I think your question assumes that something of that kind took place.

Mr. MAYNARD.—Now, then, what I want to know is, will you swear but what that was the true fact in the case, that you received your $140.00, and that is all you received in cash, and that he allowed you for what you had paid into the land office, and did not give you either money or check? A. I do not understand it.

By the EXAMINER.—You can answer that question,

A. I do not know what he is talking about; I cannot state the amount he paid me.

Q. You have no recollection?

A. No, sir, I have not.

(Testimony of George Dildine.)

Q. So you are unable to say but what that is the true state of facts, then, that you were allowed the $140.00, and he credited you with the balance that had been paid into the land office?

A. I do not understand that there was any credit about it.

Q. But you are not able to say but what that was all the amount you did receive?

A. I will acknowledge that I cannot state what I did get, the exact amount.

Mr. WALSH.—The question now put to you is whether you are willing to swear that the $140.00 was all he paid you?

A. No.

Q. (Mr. MAYNARD.) If you don't know how much you did receive, how are you able to say but what that is all you did receive, if you cannot remember the amount at all?

A. Oh, well, that would be incriminating myself to say that was all I received; I am not up here for the purpose of incriminating myself.

Q. And that is the reason, is it?

A. I got all back that I put into the proposition, and I came to the agreement what he would give me for the land, and he certainly paid me that or I would not have went away satisfied, that is the best of my knowledge.

Q. You would not have gone away satisfied if you had received your hundred dollars and forty more besides?

A. I would not.

(Testimony of George Dildine.)

Q. I mean as to the profit over the amount that had been paid into the land office?

A. That I had paid into the land office?

Q. Over and above the amount that you had paid for the land, you would have been satisfied in receiving $140.00?

A. I would have been satisfied if I could advanced—if I went away from there making a profit of $140.00 I would have been satisfied.

Q. And that is what you did receive?

A. I made $140.00 out of the deal.

Cross-examination.

(Mr. BICKFORD.)

Q. Now, Mr. Dildine, at the time you went to the land office, as I understand you, you paid the government price for the land? A. Paid them all they asked.

Q. You paid over money which you yourself had in your possession at the time payment was made?

A. Yes, sir, I did.

Q. You paid also the land office fees at that time, whatever they were? A. Yes, sir.

Q. You also received from the Government a final receipt showing that you had made the payment, didn't you?

A. I think I did, I think I got that right in the office there.

Q. Now, in making these final receipts, I will explain to you that they make these receipts in duplicate and send one to the Department of the Interior, and one is given to the purchaser of the land. Now, I will ask you

(Testimony of George Dildine.)

to state if you got a paper from the United States land office similar to that, Mr. Dildine?

A. I think I have seen such a paper as that before.

Q. Is that the kind of a paper you got from the land office at the time you made the payment?

A. I think so.

Mr. BICKFORD.—The paper I show the witness reads as follows: "1147 Timber and Stone. Dec. 29 2 4-131. Receiver's Office at Missoula, Montana, October 23d, 1899. Received from George Dildine of Missoula County, Montana, the sum of four hundred dollars and no-cents, being in full for the west half of the northwest quarter and the north half of the southwest quarter of section number 8, in township 14, north of range 15 west, containing one hundred and sixty acres and no-hundredths, at two-fifty per acre." Signed, William Q. Ranft, Receiver. In figures on the lower left hand corner $400.00, and following that $1.50 attorney fee received. Number of written words, 667; rate per hundred words, 22 1-2 cents; also the register and receiver's fee of $10.00.

Q. As I understand you, Mr. Dildine, you paid all of that money out of moneys which was then in your possession and which was your own money?

A. To the best of my knowledge, I paid everything they asked for.

Q. I will ask you to state whether you borrowed this money or if it was money that belonged to you?

A. No, it was my own money; money that belonged to me.

(Testimony of George Dildine.)

Q. I will ask you to state whether it is your practice or habit to carry a bank account?

A. Yes, I do.

Q. Have you ever carried more than one in the town of Missoula? A. I have two now.

Q. Whereabouts are they kept?

A. One in the First National Bank, and one in the Western National, got them right with me if you want to see them. I can produce them right here, I can show you up to the last deposit.

Q. You considered then at the time when you were negotiating for the sale of this land, that you were getting a fair price for it?

A. Yes, I congratulated myself to think I was getting as much as that.

Q. I will ask you to state whether you had ever made any bargain or agreement for the sale of the land prior to the time when you actually did sell it?

A. No, sir.

Q. You are a citizen of the United States?

A. I am.

Q. Over the age of 21 years? A. Over 21.

Q. Had you ever made a timber and stone entry prior to this one? A. No, sir.

Q. The land that you entered was not agricultural land, was it? A. No, sir.

Q. What was it chiefly valuable for?

A. Well, stone and timber.

Q. The stone and timber contained thereon?

(Testimony of George Dildine.)

A. Yes, sir.

Q. Question number thirteen is as follows: "Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner with any person whomsoever by which the title which you may acquire from the government of the United States may inure in whole or in part to the benefit of any person except yourself?" Your answer to this is, "No, sir." That answer was true? A. That is true.

Q. When you made it? A. Yes, sir.

Q. Question number 14 is as follows: "Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?" Your answer is, "Yes, sir." Was that answer true? A. That is true.

Q. Question number fifteen is as follows: "Has any other person than yourself, or has any firm, corporation or association any interest in the entry you are now making or in the land or in the timber thereon?" and you answered, "No." Was that true? A. That is correct.

Q. Then as I understand you, you had no hidden motive in making this land entry, but were simply availing yourself of the right which you had under the laws of the United States? A. Yes, sir.

GEORGE DILDINE.

Subscribed and sworn to before me this sixth day of March, 1902.

HENRY N. BLAKE,
Examiner.

March 6th, 1902, ten A. M.

Hearing resumed pursuant to adjournment.

Mrs. HANNAH B. AREY, a witness called by the complainant, after being first duly sworn by the Examiner, testified as follows:

Q. Mrs. Arey, where do you live?

A. In Missoula.

Q. How long have you lived there?

A. Three years this next month.

Q. How long have you lived in Montana?

A. Nine or ten years.

Q. Where did you live before you moved to Missoula?

A. In Michigan, Big Rapids, Michigan. I lived in quite a number of places before I came to Montana.

Q. And you have lived about four years in Montana?

A. No, nine or ten years.

Q. Four years in Missoula?

A. Three years this summer.

Q. Where did you live before that?

A. We lived up in the Blackfoot, on the Clearwater. We left Helena and lived one year up in the Blackfoot and then went to Missoula.

Q. You say that you lived up in the Clearwater just before you went to Missoula? A. Yes, sir.

Q. What year was that?

A. I know it was two years ago, I can't tell exactly.

Q. Three years ago? A. Yes, it was in 1899.

Q. Whereabouts were you living up the Clearwater?

(Testimony of Mrs. Hannah B. Arey.)

A. We first lived on the Blanchard ranch, and after that on the Harry Zayas ranch.

Q. What was your husband's name?

A. Frank B.

Q. Frank B. Arey? A. Yes, sir.

Q. You were living with your husband on these two different ranches up on the Clearwater during the year 1899? A. Yes, sir.

Q. Did you at that time know Mr. and Mrs. Chauncey L. Griswold? A. Yes, sir.

Q. How far was their home from yours?

A. Why, I think it was about three miles the first six weeks. That is, when we lived on the Blanchard ranch.

Q. What is that?

A. When we lived on the Blanchard ranch we were three miles from Griswold's place. Afterwards we were eight or ten miles from there.

Q. Were you on friendly visiting terms with Mrs. Griswold? A. Well, just in a business way.

Q. With Mrs. Griswold?

A. Yes, in a business way.

Q. What business way, what do you mean by that?

A. Well, I kept a little postoffice when I first went up there and after that we lived on the Blanchard ranch, and Mrs. Griswold kept it then and I called at her place. I don't think she was ever in my house.

Q. You were postmistress, were you?

A. For the first six weeks that I was there.

Q. And then Mrs. Griswold was postmistress?

(Testimony of Mrs. Hannah B. Arey.)

A. Yes, sir.

Q. Well, during this spring and summer and fall of 1899, while you were living up there, did you know of the fact of Mr. Griswold locating men and women under the Stone and Timber Act?

A. Well, not while I lived there.

Q. Not while you lived there?

A. No, sir, the next year after.

Q. Where was it—where were you living?

A. In Missoula.

Q. In Missoula? A. Yes, sir.

Q. From whom did you learn this?

A. Well, I believe Mr. Griswold told me that he was locating people.

Q. Whereabouts were you?

A. When he told me this?

Q. Yes, when you had this conversation?

A. Well, I had a talk when I met Mr. Griswold in a buggy near my home.

Q. Where? A. Where was I when I met him?

Q. Yes. A. In Missoula.

Q. Who was with you then? A. I was alone.

Q. You were in a buggy? A. Yes, sir.

Q. Did Mr. Griswold open the conversation with you?

A. I don't think he did.

Q. How did it happen—how did you ask him about it?

A. I believe he asked me how my husband was. He was very ill at the time.

Q. And then did you speak to him about this matter?

(Testimony of Mrs. Hannah B. Arey.)

A. Yes, I believe it.

Q. Just state now what you said to him, Mrs. Arey.

By Mr. BICKFORD.—We object to any conversation between the witness and Chauncey L. Griswold upon the ground that it is hearsay and irrelevant and immaterial, and not responsive to any issue in the case.

Q. Now, please answer, Mrs. Arey.

A. I asked him if he was still locating people, if that was his business.

Q. Well, go on and state just what was said.

A. And I asked him if he could locate me.

By Mr. BICKFORD.—We object to the witness stating any conversation had with Mr. Griswold and move to strike it out for the further reason that the time when this conversation took place has not been fixed, and for the reason that there is no charge of any illegality in the entry on the part of the witness, and for the further reason that it is irrelevant and immaterial, and incompetent for any purpose.

Q. I wish you would go on and state, Mrs. Arey, that conversation which you had there.

A. Mr. Griswold told me all the best claims had been taken, and that he didn't think he could locate me. I think that was all he said. Yet I remember that he said he would let me know. But he never came back to let me know anything about it.

Q. How was it, Mrs. Arey, that you happened to speak to Mr. Griswold about his taking up a claim for you?

(Testimony of Mrs. Hannah B. Arey.)

A. Well, I knew that was what he had been engaged in doing. He told me so, I believe.

Q. Where did he tell you this?

By Mr. BICKFORD.—We object to the question for the reason that the time when this conversation took place has not been fixed, and for the further reason that there is no charge of any illegality or irregularity in the entry on the part of the witness, and for the further reason that it is irrelevant and immaterial and incompetent for any purpose.

A. I couldn't say, but I understood that—I believe that he did tell me. I had heard it anyway.

Q. Well, what had you heard?

By Mr. BICKFORD.—We object to that for the reason that it relates to a time when this conversation took place that has not been fixed by the witness, and further that there is no charge of any illegality or irregularity in the entry on the part of the witness, and upon the further ground that it is irrelevant and immaterial and incompetent for any purpose whatever.

A. That was his business.

Q. What?

A. I had heard that that was his business.

Q. What was his business?

A. Locating people on the timber claims.

Q. For whom was he making these locations?

By Mr. BICKFORD.—We object to that for the reason that it relates to a time when this conversation took place

(Testimony of Mrs. Hannah B. Arey.)

that has not been fixed by the witness, and further that there is no charge of any illegality or irregularity in the entry on the part of the witness, and upon the further ground that it is irrelevant and immaterial and incompetent for any purpose whatever.

A. I couldn't say as to that.

Q. Had you not heard? A. I had not.

Q. You don't know who he was working for?

A. No, he didn't tell me.

Q. And you never heard? What is your answer?

A. I hadn't heard.

Q. What?

A. I hadn't heard, he didn't tell me that.

Q. Had you not heard as to just exactly what the facts and circumstances were relative to these locations?

A. Not until afterwards.

Q. After when? A. About a month after that.

Q. After when?

A. After the conversation with Mr. Griswold.

Q. What had you heard previous to your conversation with Mr. Griswold that led you to ask him to make a location for you or to select one?

By Mr. BICKFORD.—We object to that upon the ground that it is irrelevant and immaterial, as to what the witness heard, and for the further reason that it is hearsay evidence.

A. Well, I had heard that people were making money by locating on timber claims, and I suppose I wanted to do the same.

(Testimony of Mrs. Hannah B. Arey.)

Q. How much money were they making?

A. I don't know.

Q. What? A. I don't know.

Q. Who had you heard it from?

By Mr. BICKFORD.—We object to that upon the ground that it is irrelevant and immaterial, as to what the witness had heard, or who she heard it from, and further upon the ground that it is hearsay evidence.

A. Well, I think Albert Jemison told me.

Q. Albert Jemison? A. Yes, sir.

Q. He was the one that told you?

By Mr. BICKFORD.—We object to that upon the ground that it is irrelevant and immaterial, as to what the witness had heard, or who she heard it from, and further upon the ground that it is hearsay evidence.

A. Yes, sir.

Q. Whereabouts was that?

By Mr. WALSH.—We object to the question for the reason that it is irrelevant and immaterial where it was told to the witness or who told it to her, and further that it is hearsay evidence.

A. At my house.

Q. In the Clearwater?

By Mr. WALSH.—We object to the question for the reason that it is irrelevant and immaterial where it was told to the witness or who told it to her, and on the further ground that it is hearsay.

A. No, sir, at Missoula.

(Testimony of Mrs. Hannah B. Arey.)

Q. In Missoula?

By Mr. WALSH.—We object to that also as being irrelevant and immaterial, and further upon the ground that it is hearsay.

A. Yes, sir, in Missoula.

Q. How did Albert happen to be at your home?

A. Well, we were friends up there in the country and we went back and forth.

Q. But he came to your house purely for visiting purposes? A. Well, I think so.

Q. Came alone?

A. Yes, my husband was sick at the time. That is mostly what he came for.

Q. And you then overheard there what Albert said about these locations?

By Mr. WALSH.—We object to the question as being irrelevant and immaterial what the witness overheard, and as being hearsay.

A. Yes, sir.

Q. What did he state at that time?

By Mr. WALSH.—We object to the question as being irrelevant and immaterial what the witness overheard, and as being hearsay.

A. About as Mr. Griswold did, that the best claims had all been taken up.

Q. Well, there must have been conversation that you had at that time that led up to that matter?

A. Well, he and my husband—

(Testimony of Mrs. Hannah B. Arey.)

Q. What?

A. Well, he and my husband were speaking about it. He was speaking about it to my husband.

Q. And in your presence and hearing?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial to the issues in this case, and further that it is wholly hearsay evidence.

A. Yes, sir.

Q. Well, what was it that was said?

By Mr. BICKFORD.—We object to that also upon the ground that it is irrelevant and immaterial and has no bearing on any issues raised in the pleadings in this case, and in no way relating to any entry made by the witness, and as being hearsay testimony.

A. I cannot remember all except what he said to me direct.

Q. What was that?

A. I remember only what he said to me directly.

Q. And he said that they were all taken up?

By Mr. BICKFORD.—We object to that as irrelevant and immaterial and hearsay.

A. He said that all the best ones were taken up.

Q. Was that said in response to an inquiry from you?

A. Yes, sir.

Q. What was that inquiry?

By Mr. BICKFORD.—That is also objected to as being irrelevant and immaterial and leading, and such conversation relates in no way to any of the issues in this case,

(Testimony of Mrs. Hannah B. Arey.)

and upon the further ground that it is hearsay testimony.

A. I am not sure that I inquired; I think he offered to locate me.

Q. He offered to locate you?

By Mr. BICKFORD.—We object to that as being leading and irrelevant and immaterial, and hearsay.

A. Yes, sir, I think he did.

Q. Who was to pay you for the land?

A. He didn't tell me that.

Q. He didn't tell you that?

By Mr. BICKFORD.—We object to that as being leading and irrelevant and immaterial, and hearsay.

A. No, sir.

Q. Did he give you to understand that it would be paid for by somebody?

By Mr. BICKFORD.—We object to that for the reason that it is leading in the first place, and in the next place, it is irrelevant and immaterial to the issues in this case, and such conversation is hearsay, and incompetent.

A. He gave me to understand that I could borrow the money to pay for it.

Q. Who were you to borrow the money from?

A. He didn't tell me.

Q. And what were you to do after you had made the entry?

By Mr. BICKFORD.—We object to that for the reason that it is leading, and further that it is irrelevant and immaterial to any of the issues in this case.

(Testimony of Mrs. Hannah B. Arey.)

A. I don't quite understand you.

Q. What were you to do after you had made the entry and made your final proof on this location?

By Mr. BICKFORD.—We object to the question for the reason that it is leading, and further that it is irrelevant and immaterial to any of the issues in this case.

A. I don't think we discussed that.

Q. What?

A. I don't think we discussed that part of it.

Q. Will you swear that you did not?

By Mr. BICKFORD.—We object to that as being leading and as attempt on the part of the counsel for the government to cross-examine his own witness, and as being irrelevant and immaterial.

A. Yes, sir.

Q. So you don't know at all what you were going to do with the location?

A. I was supposed to make some money out of it, if I ever sold it; but there was nothing said as to that, or as to who it was to be sold, or as to who I was to have the money from.

Q. Or how much you were to get?

By Mr. BICKFORD.—We object to that for the reason that it is irrelevant and immaterial to any of the issues in this case, and it is also leading, and further upon the ground that it is hearsay.

A. No, because he said several times that the best claims had all been taken up.

(Testimony of Mrs. Hannah B. Arey.)

Q. Well, it wouldn't make any difference if it was the best or worst if you got your location, would it?

By Mr. BICKFORD.—We object to the question as being an attempt on the part of counsel to cross-examine his own witness, and further that it is irrelevant and immaterial.

A. Well, yes, if I couldn't make anything out of it I wouldn't locate.

Q. The only purpose that you had was to get a location which Albert Jemison would select for you, wasn't it?

By Mr. BICKFORD.—We object to the question as being leading, and an attempt to cross-examine the witness, and as being irrelevant and immaterial.

A. I wanted to make something, of course, for myself.

Q. But the selection he would get you would be such a one as you could make something out of it?

Mr. WALSH.—We object to that as leading, and irrelevant and immaterial.

A. That is what I understood.

Q. That is what you understood? A. Yes, sir.

Q. And he didn't furnish you with a location, did he? A. No, sir.

Q. Well, you understood that you could get something out of the location that he selected for you?

By Mr. WALSH.—We object to that as being leading, and further as being irrelevant and immaterial to any

(Testimony of Mrs. Hannah B. Arey.)

of the issues in this case; and as to what the witness understood would not be competent in any respect.

A. There wasn't anything said about that.

Q. What is that?

A. There wasn't anything said about that.

Q. You had no understanding on the subject?

A. No, sir.

Q. And no intimation of any kind?

By Mr. WALSH.—We object to that as calling for a conclusion of the witness and therefore incompetent testimony.

A. Well, I understand that others had made money and I thought that I could myself, and that if I could I would want one.

Q. And hadn't you been told as to how much they had paid for them?

By Mr. WALSH.—We object to that as leading and hearsay testimony and wholly irrelevant and immaterial to any of the issues in this case.

A. No, I had not.

Q. Had heard nothing of the kind?

By Mr. WALSH.—We object to that as being hearsay and irrelevant and immaterial.

A. I hadn't heard as to what they had made.

Q. Had you heard about that at all? A. No.

Q. What? A. No.

Q. You had heard from nobody that each and every

(Testimony of Mrs. Hannah B. Arey.)

one of those entry men and women had got the sum of one hundred dollars?

By Mr. WALSH.—We object to the question as being leading in the first place, the witness being evidently anxious to tell the facts just exactly as they occurred, and showing no disposition whatever to be hostile, or attempting to conceal any facts whatever, and no facts appearing at all in the examination of the witness that justifies counsel in propounding any of those leading

Q. Your husband took up a claim, didn't he?

A. Yes, sir.

Q. Who located him? A. Mr. Dunham.

Q. Mr. who?

A. Mr. Dunham, of Ovando, a friend of ours.

Q. Where is your husband, Mrs. Arey?

A. He is in Missoula.

Q. Do you know who he sold his claim to?

A. Yes, sir.

Q. Who did he sell his claim to?

A. Mr. Cobban.

Q. Do you know how much he got for it?

A. No, sir.

Q. He never told you how much he got for it?

A. No, sir.

Q. You never heard how much he got for it?

By Mr. BICKFORD.—We object to the question for the reason that it is leading, and upon the further ground that it is hearsay testimony, and irrelevant and immaterial to the issues in this case.

(Testimony of Mrs. Hannah B. Arey.)

A. No, sir.

Q. You swore that you never heard from him, how much he got for it?

By Mr. WALSH.—We object to the question as being leading, and an attempt on the part of counsel for the government to cross-examine his own witness.

A. I know how much he got from me.

Q. How much did he give you?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial to any of the issues in this case, there being no allegation in the bill of complaint concerning any entry which may have been made by this witness, and as leading.

A. A hundred and ten dollars.

Q. How much did you say he gave you?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial to any of the issues in this case, there being no allegation in the bill of complaint, concerning any entry which may have been made by this witness, and as being leading.

A. A hundred and ten dollars.

Q. He told you at the time that was what he made on his claim?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial to any of the issues in this case, and as being leading.

A. I don't think he did.

Q. You won't swear but what he did?

(Testimony of Mrs. Hannah B. Arey.)

By Mr. WALSH.—We object to that as being an attempt on behalf of counsel for the government to cross-examine his own witness when she has not shown any disposition to evade answering the question nor assumed a hostile attitude to counsel.

A. Well, I don't remember that he did.

Q. Was that before or after you had that conversation with Mr. Griswold? A. It was before.

Q. That he had made this location?

A. Yes, sir.

Q. And you have got your hundred and dollars from him? A. Yes, sir.

Q. Then you went to Mr. Griswold and asked him if he could not get a claim for you?

By Mr. WALSH.—We object to that as being leading.

A. I didn't go to him.

Q. What is that?

A. I didn't go to Mr. Griswold, I met him.

Q. You met him? And spoke to him about it first?

A. Yes, sir, I believe I did.

Cross-examination.

(By Mr. BICKFORD.)

Q. Mrs. Arey, you are acquainted with the reputation of Mr. Griswold in the community in which he lives for truth and veracity and honesty and integrity, are you? A. I believe I am.

Q. Is it good or bad?

A. I don't like to answer.

(Testimony of Mrs. Hannah B. Arey.)

Redirect Examination.

(By Mr. MAYNARD.)

Q. When did you come to town, Mrs. Arey?

A. Tuesday.

Q. And this is Thursday? A. Yes, sir.

Q. How many conversations have you had with Mr. Cobban since you have been here?

A. I saw Mr. Cobban on the street-car, and I saw him yesterday, but we didn't discuss what I am talking about here this morning.

Q. How many times have you been to Mr. Walsh's office?

A. I believe I have never been there but once.

Q. Well, you have been there once?

A. Yes, sir.

Q. When was that? A. Yesterday morning.

Q. Who took you there?

A. I went there alone.

Q. What is that? A. I went there alone.

Q. Who told you to go there, Mrs. Arey?

A. No one.

Q. You went to Mr. Walsh's office on your own account, did you? A. Yes, sir.

Q. And had a conversation with him in regard to your testimony here? A. No, I did not.

Q. Didn't you talk to him about the fact that you had been subpoenaed here?

A. Yes, I told him I had been subpoenaed. I didn't know what it was for.

(Testimony of Mrs. Hannah B. Arey.)

Q. Well, you were subpoenaed by the government; why did you go to the office of defendant's counsel?

A. Well, I had business there on account of my husband.

Q. On account of your husband? A. Yes, sir.

Q. That is your husband was indicted for perjury, and you went to see him as your husband's attorney?

A. Yes, sir, mostly.

Q. Mostly? A. Yes, sir.

Recross-examination.

(By Mr. BICKFORD.)

Q. In your conversation in Mr. Walsh's office there was never anything said to you to tell anything except the truth, was there?

A. Nothing was said. I told him I didn't know what I was subpoenaed for.

Q. As a matter of fact, didn't you state to Mr. Walsh that you didn't know anything about this case whatever, and you couldn't tell what you had been subpoenaed for, or why you had been subpoenaed?

A. Yes, that is what I said.

HANNAH V. AREY.

Subscribed and sworn to before me, this seventh day of March, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

Mrs. ROLLA MATTHEWS, a witness called on behalf of the complainant, after being duly sworn by the Examiner, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mrs. Matthews, you are residing in Missoula, are you not, now? A. No, not in Missoula.

Q. What is that?

A. Not right in Missoula, no, sir.

Q. What is your name, please?

A. Rella Matthews.

Q. What is your husband's name, Mrs Matthews?

A. Ollie Matthews.

Q. And where did you say you were living?

A. I am living five miles from Corvallis. I am living in the country.

Q. Where is Corvallis?

A. It is in the Bitterroot Valley, forty-five miles from Missoula.

Q. How long have you been living there, Mrs. Matthews? A. Since the sixth of September.

Q. This last September? A. Yes, sir.

Q. Previous to your moving out into the country, you lived in the city of Missoula, did you? A. Yes, sir.

Q. How long did you live there?

A. A little over four years.

Q. Do you know a Mr. and Mrs Chauncey L. Griswold? A. I do.

Q. How long have you known them?

(Testimony of Mrs. Rolla Matthews.)

A. Why, for about—I think for about ten years.

Q. In the spring and summer of 1899, did you know them? A. Three years ago, yes, sir.

Q. Three years ago you were living in Missoula, were you not? A. Yes, sir.

Q. You may state as to whether or not, while you were so living in Missoula, you knew of the fact that men and women were taking up claims under the Stone and Timber Act up in the Blackfoot country?

A. Why, I know that they were. Did you mean for me to tell all I know about it, or how? I don't understand the question.

Q. Now, Mrs. Matthews, if you know that, I wish you would go on in your own way and state to the gentleman that is taking the testimony down, all the facts and circumstances in the case, just in your own way.

By Mr. BICKFORD.—We object to that for the reason that it isn't responsive to any issue raised by the pleadings in this case, and irrelevant and immaterial.

A. Why, I first heard, I think it was in August, three years ago, that they were taking claims up. Of course, I knew Mr. Griswold well—

By Mr. BICKFORD.—We object to that as hearsay, and move to strike out the statement of the witness for that reason.

Q. They just simply object, Mrs. Matthews, but you can go on in the same way and answer the question.

A. —That he was locating claims, and then I seen Mr. Griswold again, I think it was in September, in the

(Testimony of Mrs. Rolla Matthews.)

Missoula Mercantile place and I asked him to get me a claim, and my husband too, and he said he would.

By Mr. BICKFORD.—We object to this, and we object to any conversation whatever had between the witness and Griswold, upon the ground that it is hearsay, and next it is irrelevant and immaterial, and not responsive to any issue in the case. And further for the reason that there is no charge in the bill of complaint that the witness now upon the stand ever made a timber and stone entry.

(Witness continuing:) —and then I didn't see Mr. Griswold any more for quite a long while.

Q. You can go on, he can take it down faster than that, Mrs. Matthews.

By the WITNESS.—Yes, but I have to stop and think. It has been quite a while ago. I didn't see Mr. Griswold any more then until November, and my husband and I went to his house and asked him to get us a claim, but he never got us one. I don't know what was the reason. I got quite provoked about it because he wouldn't. I believe that is all.

Q. Why were you provoked at Mr. Griswold, because he wouldn't get a claim for you?

By Mr. BICKFORD.—We object to that as calling for a reason from the witness and not a fact.

A. My reason was because I thought I could make some money out of it.

Q. How much money did you expect to make out of it?

(Testimony of Mrs. Rolla Matthews.)

By Mr. WALSH.—We object to that as being incompetent, irrelevant and immaterial, and as not calling for any fact from the witness that has any bearing upon the issues in this case.

A. Well, I knew some. I knew of one party that got a hundred dollars. She told me she did.

By Mr. WALSH.—We object to this for the reason that it is entirely hearsay testimony.

Q. She told you what?

By Mr. WALSH.—We object to that for the reason that it is hearsay and irrelevant and immaterial to the issues in this case.

A. She said that I could get the same for mine.

Q. From whom?

By Mr. WALSH.—We object to that as being leading; and further as being irrelevant and immaterial to the issues in this case.

A. For the gentleman Mr. Griswold was working for.

Q. Who was that man?

A. I understood that it was Mr. Cobban.

By Mr. BICKFORD.—We object to the statement of the witness as not being within the knowledge of the witness, and we therefore moved to strike out the same.

Q. Who was this man that told you—who was this woman that told you you could get this hundred dollars from Mr. Cobban? A. Miss Bryan.

Q. Miss Lelia T. Bryan? A. Yes, sir.

Q. She was a school teacher, was she?

(Testimony of Mrs. Rolla Matthews.)

By Mr. BICKFORD.—We object to that, as no attempt has been made to impeach the testimony of Miss Bryan.

A. Yes, sir.

Q. In Missoula? A. Yes, sir.

Q. Whereabouts was this that Miss Bryan told you this? A. At my house.

Q. Did she tell you what she was to do?

A. No, sir.

Q. You understood that you were to take up a claim?

By Mr. WALSH.—We object to the question as leading, and further we object to the witness stating what she understood. The question does not call for any fact from the witness.

A. Yes, sir.

Q. And who were you to get the claim through?

A. Mr. Griswold was to locate it for us.

Q. And did you hear that from Miss Bryan?

By Mr. BICKFORD.—We object to that as being leading and irrelevant and immaterial, and hearsay, and no foundation whatever has been laid for impeaching the testimony of Miss Bryan.

A. Yes, sir.

Q. Mr. Griswold was to locate you, and he was working for Mr. Cobban, and Mr. Cobban was to pay the hundred dollars.

By Mr. WALSH.—We object to that as being leading, and we move to strike out the testimony of the witness as to the matter referred to in the question of counsel.

(Testimony of Mrs. Rolla Matthews.)

Q. Is that it, Mrs. Matthews?

By Mr. WALSH.—We object to that as leading, and irrelevant and immaterial to the issues in this case.

A. Yes, sir.

Q. Who did Miss Bryan tell you was to furnish the money?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial to the issues in this case, and as being hearsay.

A. She said the money was furnished, and after she proved up on the claim she sold it and got a hundred dollars—made a profit of one hundred dollars.

By Mr. BICKFORD.—We move to strike out the answer of the witness on the ground that it is hearsay.

Q. And who was to furnish you the money to pay for the land?

By Mr. BICKFORD.—We object to the question, for the reason that it is hearsay and irrelevant and immaterial to the issues in this case, and leading.

A. The one that she sold the claim to, I understood.

Q. And so after you had had this conversation with Miss Bryan, and she told you all this, then you went to see Mr. Griswold? A. Yes, sir.

Q. To see if you couldn't get a claim?

By Mr. WALSH.—We object to that as leading.

A. Yes, sir.

Q. But Mr. Griswold was unable to furnish you a location, was he?

(Testimony of Mrs. Rolla Matthews.)

By Mr. WALSH.—We object to that as leading.

A. Yes, sir.

Q. Do you know why?

By Mr. WALSH.—We object to that, for the reason that it is leading and irrelevant and immaterial.

A. Why, he said there wasn't any good ones any more; that they had all been taken up.

Q. Said there was no good ones; that the good ones had all been taken up?

By Mr. BICKFORD.—We object to that as being leading, and further that it is irrelevant and immaterial to the issues in this case.

A. Yes, sir.

Cross-examination.

(By Mr. BICKFORD.)

Q. As I understand you, Mrs. Matthews, you never have made an entry under the Timber and Stone Act of the United States? A. No, sir.

Q. Do you live up the Blackfoot? A. No, sir.

Q. Never been up there?

A. Well, no, only just a little ways above Bonner.

Q. Any further than three or four miles, perhaps, above Bonner? A. No, sir.

Q. You don't know anything of that section of country lying in the vicinity of Clearwater and Ovando?

A. No, sir, not at all.

Q. Did you charge your mind especially with these conversations which you had with Mr. Griswold or Miss Bryan?

(Testimony of Mrs. Rolla Matthews.)

A. Oh, I don't know as I did. We had conversations so many times, that I couldn't recollect about it.

Q. You do remember the conversations and the date about the time they took place? A. Yes, sir.

Q. Did you have, as far as you are concerned, any talk with Mr. Cobban? A. What?

Q. Did you ever have any talk with Mr. Cobban yourself? A. No, sir.

Q. Did you ever have any talk with Mr. Catlin, or any of the officers of the land office? A. No, sir.

Q. And you don't know anything that you had stated of your own knowledge with reference to what Mr. Cobban was doing? A. No.

Q. You didn't contemplate committing perjury for the purpose of getting a piece of land, did you?

A. I didn't understand that I would be committing perjury when I asked for a claim.

Q. You understood, in other words, that it was a right that belonged to you as a citizen of the United States, over the age of twenty-one years, and who had never used that right; that was the way you understood it, was it not? A. Yes, sir.

Q. You know where the land office is in Missoula?

A. I think I do.

Q. You have never been there?

A. Never been in the land office, no, sir.

Q. Have you ever appeared as a witness in any of these cases under the Stone and Timber Act?

A. No, sir.

(Testimony of Mrs. Rolla Matthews.)

Q. And you have no knowledge except from the conversation which you have had with different people concerning the timber and stone lands of the United States?

A. No, sir.

Q. And you have no knowledge concerning the entries made thereunder except such conversations?

A. No, only just what I heard.

Q. Just what was told you?

A. Yes, sir, just what was told me.

Q. You have no personal knowledge as to the taking up of these timber claims or anything of that sort, have you? A. No, sir.

Q. Your information in this matter was obtained from parties with whom you had these conversations, was it? A. Yes, sir.

RELLA MATTHEWS.

Subscribed and sworn to before me this seventh day of March, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

Mr. OLLIE MATTHEWS, called by the complainant, after being first duly sworn by the Examiner, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Matthews, you are the husband of the lady who has just left the stand, are you? A. I am.

Q. You heard her testimony, did you?

(Testimony of Mr. Ollie Matthews.)

A. Yes, sir, I did.

Q. Do you know Mr. Griswold? A. I do.

Q. How long have you known him?

A. Between nine and ten years; about ten years, I should judge.

Q. Did you have a conversation with him in the spring of 1899, or the fall or summer of that year, the season of 1899, in regard to his working in locating people under the Stone and Timber Act? A. I did.

Q. Where? A. In Missoula.

Q. State what that conversation was, Mr. Matthews.

By Mr. BICKFORD.—We object to that, for the reason that the question calls for hearsay testimony, and for matters that are irrelevant and immaterial to the issues in this case.

A. Well, I asked him several times if he wouldn't locate a claim for myself and wife, and he said he would, but he kept putting it off, and I didn't see him for quite a while. He wasn't in town, and only came in town once in a while, and every time he would come to town I would see him, and ask him if he had located a claim for us. Mr. Griswold said he hadn't at various times. At last I got quite indignant at Mr. Griswold to think that he hadn't got me a claim for myself and my wife. I thought he was rather unjust in getting everybody else a claim and didn't get myself and my wife one.

Q. What is that?

A. At that time I was in need of money, and I thought

(Testimony of Mr. Ollie Matthews.)

a few hundred dollars, or a couple of hundred dollars, would help us out, but I never got a claim.

Q. Did he give you any reason?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial, and having no bearing whatever upon any of the issues in this case.

A. He never gave us any particular reason, only he he said there was no more good claims in the Clearwater. He said they had all been taken up.

Q. You were indignant to think that by his not getting you a claim you and your wife couldn't get a hundred dollars perhaps.

By Mr. WALSH.—We object to that as being leading, and further for the reason that it is irrelevant and immaterial.

A. I was indignant to think that we didn't get a claim and didn't get a little money out of it

Q. Who did you hear from in regard to this scheme of making money?

By Mr. WALSH.—We object to that as being irrelevant and immaterial to the issues in this case and as being hearsay.

A. Well, it was common rumor around town.

Q. What was the common rumor?

By Mr. BICKFORD.—We object to that as hearsay, and as being irrelevant and immaterial to any of the issues in this case.

A. The common rumor was that Mr. Griswold was

(Testimony of Mr. Ollie Matthews.)

locating claims up there, and a man could get over and above all expenses clear a hundred dollars.

Q. And who was it rumored that he was working for?

By Mr. WALSH.—That is objected to as being entirely hearsay and irrelevant and immaterial.

A. Mr. R. M. Cobban.

Q. And what was the—what do I understand was the general rumor, and the knowledge of the community that you would have to do—that these men and women that went up there to take up claims what they would have to do?

By Mr. WALSH.—That is objected to as being irrelevant and immaterial to the issues and as hearsay.

A. Well, it had been told me that he was locating claims.

Q. Who was?

A. Mr. Griswold; and each party would have to appear on the claim and walk over each part of it, and then it was advertised and they would have to go to Helena I suppose to enter it in the land office. I don't understand the land laws very well; and then in sixty days the final proofs would be made and the money was furnished, and after final proofs were made I supposed you would receive so much money—I think it was a hundred dollars.

By Mr. BICKFORD.—We move to strike out the answer of the witness for the reason that it is based on supposition and is hearsay.

(Testimony of Mr. Ollie Matthews.)

Q. Were you told that?

By Mr. WALSH.—We object to that as being leading and hearsay.

A. Yes, sir.

Q. Who told it to you?

By Mr. BICKFORD.—We object to that for the reason that it is hearsay and irrelevant and immaterial.

A. Well, I heard it from various parties, and Mr. Griswold told me so himself.

By Mr. BICKFORD.—We move to strike out the answer of the witness for the reason that it is hearsay testimony.

Q. And was all the money paid furnished by Mr. Cobban so far as paying for the land and paying all the expenses?

By Mr. BICKFORD.—We object to that for the reason that it is leading, and upon the further ground that it is hearsay, and irrelevant and immaterial.

A. The money was to be furnished, as I understood it, from Mr. R. M. Cobban.

Q. To pay for the land and what else?

A. To pay for the land and to pay the hundred dollars that the people was to receive for the claims.

Q. They were to make the entry and get the final receipt, and then would do it at once after making the final payments, and getting the receipts.

By Mr. BICKFORD.—We object to that as being hear-

(Testimony of Mr. Ollie Matthews.)

say and calling for an opinion from the witness, and not for any fact.

A. I don't understand you.

Q. What were the entrymen or entrywomen to do immediately after making final payment with Mr. Cobban's money?

By Mr. WALSH.—We object to that as being irrelevant and immaterial and assuming a fact which does not appear in the record, and further upon the ground that it is irrelevant and immaterial to any of the issues in this case.

A. To execute a deed to Mr. Cobban.

Q. To execute a deed to Mr. Cobban?

Cross-examination.

(By Mr. BICKFORD.)

Q. You never, as I understand it, Mr. Matthews, made any timber and stone entries yourself?

A. No, sir.

Q. You never have at any time?

A. No, sir, never have in all my life. I have never used up my rights.

Q. Have you ever been up in the Blackfoot?

A. No, not any further than about six miles beyond Bonner.

Q. You didn't have any idea if you made a timber and stone entry of perjuring yourself, did you?

A. No, sir, I did not at that time.

Q. Well, you did not at any time, did you?

(Testimony of Mr. Ollie Matthews.)

A. No, sir.

Q. In other words, your idea in making a timber and stone entry was to comply with the land laws of the United States? A. Yes, sir.

Q. You are a citizen of the United States?

A. Yes, sir.

Q. Over the age of twenty-one years?

A. Yes, sir.

Q. And then you had the right to make an entry under the Stone and Timber Act?

A. I suppose I did. I suppose I had the right, but didn't believe I had to perjure myself to get it.

Q. Now, with reference to these other matters that you have testified to with reference to entry under the Timber and Stone Act?

A. I had heard it from other people.

Q. You had heard that while you were living in Missoula? A. Yes, sir.

By Mr. BICKFORD.—That is all.

O. N. MATTHEWS.

Subscribed and sworn to before me this seventh day of March, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

THOMAS KENNEDY, a witness on behalf of the complainant, being first duly sworn by the Examiner, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Kennedy, what is your full name?

A. Thomas Kennedy.

Q. Where do you live? A. In Missoula.

Q. What is your business? A. Railroad man.

Q. What? A. A railroad man.

Q. How long have you lived in Missoula?

A. Between four and five years.

Q. Do you know Mr. Griswold? A. Yes, sir.

Q. How long have you known him?

A. About that time.

Q. Do you recall the fact of your being desirous to take up a stone and timber claim about three years ago?

A. Well, nothing particular.

Q. What?

A. I had a talk with different parties about it; not with Mr. Griswold.

Q. Not with Mr. Griswold?

A. Not till later on. I had a talk with Mr. Griswold some few months after that time.

Q. You had a talk with Mr. Griswold in regard to locating you? A. Yes, at one time.

Q. When was that?

A. Well, it was in about, let me see, about the latter part of 1900; somewhere along there.

(Testimony of Thomas Kennedy.)

Q. In 1899 do you mean? A. 1899 I mean, yes.

Q. Whereabouts was that?

A. Why it was in Missoula.

Q. What did you say to him?

By Mr. WALSH.—We object to that as being hearsay, and having no bearing upon any of the issues in this case, and having nothing to do with any of the entries named in the bill of complaint herein.

A. I asked Mr. Griswold if I could get a timber claim and he said he thought I could.

By Mr. BICKFORD.—We object to what the witness said to Mr. Griswold in reference to this matter for the reason that it is irrelevant and immaterial, and for that reason move to strike the same out.

Q. Just go on and state, Mr. Kennedy.

By Mr. BICKFORD.—We object to that as being incompetent, irrelevant and immaterial as to the issues in this case.

A. It never went any further. He never said anything further about it to me, nor I to him. He was locating people.

Q. What?

A. He was locating people at the time, but I didn't get any.

Q. Did he give you at any time any reason for it?

A. Well, not that I remember, I didn't hear him; I didn't see him very often. He was in that business in the timber business, and I was working on the railroad

(Testimony of Thomas Kennedy.)

and my business required me to work. I didn't see him very often.

Q. But I didn't know but what he might have given you a reason for not being able to find claims for you?

A. No, sir, if I had seen him as regularly as other people had I would have found one, but I didn't see him regularly.

Q. Now, you saw him about it, and had a conversation with several people about taking up these claims?

A. Not with several. I had a conversation with one man in particular.

Q. And the cause of that conversation was that you went to see Mr. Griswold? A. Yes, sir.

Q. Who was that particular man?

A. Mr. Bryan.

Q. What was his name, Mr. Thomas Bryan?

A. Yes, sir.

Q. When and where did that conversation take place, Mr. Kennedy?

A. On our works; we were working together.

Q. He was working under you on the railroad?

A. Not at that time; we were working under another man at the time, both of us. I wasn't foreman at that time. I had been but I wasn't just in those months.

Q. State what the conversation was that you had with Mr. Bryan.

By Mr. BICKFORD.—We object to that as being hearsay and irrelevant and immaterial and as laying no

(Testimony of Thomas Kennedy.)

foundation whatever for the impeachment of the witness, Bryan.

A. Well, Mr. Bryan told me that he would make arrangements to locate his family—his people up on the Blackfoot. He didn't say who in particular, but he said his folks, his family, he didn't say how much of a family he had or anything of that sort.

Q. Did he tell you what arrangements he had made with anybody?

By Mr. WALSH.—We object to the question for the reason that it is irrelevant and immaterial, and further that it is leading, and calls for hearsay testimony.

A. Why, yes, he said he had made arrangements with Mr. Cobban.

Q. What was the arrangements that he said he had made with Mr. Cobban?

By Mr. WALSH.—We object to the question for the reason that it is irrelevant and immaterial, and further that it is leading and calls for hearsay testimony.

A. Mr. Cobban was to furnish him money and give him a hundred dollars when the claim was proved up on for him or his folks whoever they might be.

Q. A hundred dollars to who?

A. To each person.

Q. To each person? A. Yes, sir.

Q. Just when and where did you say that that conversation took place? A. It was on the railroad.

Q. Whereabouts on the railroad?

A. About four miles from Missoula. We were build-

(Testimony of Thomas Kennedy.)

ing an iron bridge or putting in abutments for an iron bridge rather.

Q. Locate the time.

A. It was along in July. I don't just remember the date. I cannot remember now about the dates. It was in June or the latter part of June or July.

Q. Of that year? A. Of that year, yes, sir.

Q. Did he say who was making the locations for him?

By Mr. WALSH.—We object to that upon the ground that it is irrelevant and immaterial, and further that it is leading, and calls for hearsay testimony.

A. Well, he spoke to Mr. Griswold, and he spoke to another man. I don't know the other party's name.

Q. If I should give the name of Albert Jemison, would you know?

A. I couldn't be positive about that. I don't know the man. I don't know anything about Albert Jemison. I never knew the man.

Q. Besides Mr. Jemison that was locating claims?

By Mr. WALSH.—We object to that as being irrelevant and immaterial. And further upon the ground that it is hearsay and leading.

A. Yes, but I don't know the man and I wouldn't remember his name.

Q. Because of this conversation that you had with Mr. Bryan as you now have stated, you went and saw Mr. Griswold to see about getting a claim for you?

By Mr. BICKFORD.—We object to that as being lead-

(Testimony of Thomas Kennedy.)

ing. We further object to it upon the ground that it is irrelevant and immaterial and has no bearing upon any of the issues in this case, and calls for a conclusion of the witness.

A. Yes, we had some few words about it along that same year in the fall.

Q. Did you know of the fact of Mr. Bryan and his family taking up claims thereafter?

A. Nothing but what he told me. He told me that they had.

Q. Where was that?

By Mr. BICKFORD.—We object to that question upon the ground that it calls for hearsay testimony. And upon the further ground that it is leading.

A. It was up in the Blackfoot, somewhere up in that vicinity. I was never up in that country myself.

Q. Locate that place as near as you can.

A. Sir?

Q. Locate that place where he told you as near as you can, where he told you that he and his family had taken up claims as he had told you before.

By Mr. WALSH.—We object to that question upon the ground that it is irrelevant and immaterial.

A. On the Clearwater.

Q. Whereabouts?

A. I didn't ask him particularly.

Q. I mean, where were you when he told you this?

A. We were in town.

Q. Whereabouts in town?

(Testimony of Thomas Kennedy.)

A. Well, on the streets.

Q. On the streets of Missoula? A. Yes, sir.

Q. Well, locate the time as near as you can.

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial and having no bearing upon the issues in this case.

A. It was shortly after we was working together at this bridge that I spoke of. I don't just remember the months.

Q. Shortly thereafter?

A. Yes, sir, in along about the fall. Of course I didn't pay much attention to the matter because I wasn't interested just at the time.

Q. You may state as to whether or not you have since had a conversation with Mr. Bryan in regard to what he would do, if he didn't receive money in this case?

A. Yes, sir, I had a talk with him.

By Mr. WALSH.—We object to that, if the Court please, upon the ground that it is irrelevant and immaterial.

A. I have had a talk with him at two different times.

Q. Where were those two different times?

A. In Missoula on the streets. We was alone. He never told me anything particular.

Q. What was the conversation that you had with him then?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial and hearsay testimony, and no

(Testimony of Thomas Kennedy.)

proper foundation has been laid in the case upon which the witness, Mr. Bryan, can be impeached.

Q. You say that you had two conversations with him on the streets of Missoula? A. Yes, sir.

Q. In regard to what he would do in this case if he didn't receive the money?

A. No, nothing about money matters at all, I simply asked him how he got along in the court.

By Mr. MAYNARD.—Oh, all right; I will withdraw those questions then.

By the STENOGRAPHER.—Shall I strike out the questions referred to?

By Mr. WALSH.—No, let it stay in the record.

(Witness continuing:) That is what I asked him.

Q. And Mr. Bryan was the only man that you had the conversation with as you have stated? A. Yes, sir.

Cross-examination.

(By Mr. BICKFORD.)

Q. You are a citizen of the United States, are you, Mr. Kennedy? A. Yes, sir.

Q. Over twenty-one years of age? A. Yes, sir.

Q. Have you ever taken up a claim under the Stone and Timber Act of the United States?

A. No, never used no rights.

Q. You have a right to such entry under the Stone and Timber Act? A. I think so.

Q. You had no idea of committing perjury if you could have taken up a claim at that time?

(Testimony of Thomas Kennedy.)

A. No, sir, I had no such thing in my mind.

Q. You contemplated taking up a claim for your own interest because you had a right to do so under the laws of the United States? A. Yes, sir.

T. KENNEDY.

Subscribed and sworn to before me this seventh day of March, 1902.

HENRY N. BLAKE,
Examiner.

STIPULATION.

At this point it was stipulated between counsel for the respective parties that the Examiner could read over the testimony of the witness Kennedy, correct the same and certify as to its correctness.

The witness, after the foregoing stipulation, read, corrected and subscribed his testimony.

HENRY N. BLAKE,
Examiner.

CERTIFICATE.

I, Henry N. Blake, Examiner in Chancery, hereby certify that I have read over carefully the testimony of the witness, Thomas Kennedy, corrected the same, and now certify that the same has been correctly transcribed.

HENRY N. BLAKE,
Examiner in Chancery.

JOHN S. MILLER, a witness called by the complainant, after being first duly sworn by the Examiner, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. What is your name, Mr. Miller?

A. J. S. Miller.

Q. J. S. Miller? A. Yes, sir.

Q. Where do you live, Mr. Miller?

A. At Missoula at the present time.

Q. How long have you lived in Missoula?

A. Well, I have been in Missoula off and on, I haven't lived there only about a month, but I have been there off and on for the last three years.

Q. Where were you, if you remember, in the spring of 1899, three years ago now?

A. The first part of the spring I was at Nine Mile prairie, working for Boyd, and in and about the first of March, I moved over to Clearwater and kept house at Clearwater. I lived there until I think it was—well, I left there some time in April.

(Witness continuing:) My wife stayed there until about—if I remember right somewhere about the 5th and the 10th of May.

Q. Do you know Mr. Chauncey L. Griswold?

A. Yes, sir.

Q. Was he living up at Clearwater at this time?

A. He was keeping the Clearwater postoffice, a stopping place at the time that I lived there.

(Testimony of John S. Miller.)

Q. Are you able to state as to what he was doing up there, in addition to what you have just stated?

A. During that winter he was logging for the Blackfoot Milling Company. About the time I left there he was starting on a new—working for a new man. I understood him to say that he was starting into work—

By Mr. BICKFORD.—We shall object to any statements made by Griswold to this witness, for the reason that it is immaterial and irrelevant for any purposes under the issues in this case, and is only hearsay.

(Witness continuing:) —for Mr. Cobban.

Q. In your best recollection when did he start in to work for Mr. Cobban?

By Mr. WALSH.—We object to that for the reason that it is immaterial and irrelevant to the issues in this case, and further it does not appear that the witness knows anything about the inquiry of his own personal knowledge.

A. Mr. Cobban was there, I think, the latter part of March at the stopping place.

Q. Go on now and state in your own way, Mr. Miller.

By Mr. BICKFORD.—We object to that for the reason that it is immaterial and irrelevant and has no bearing upon any of the issues in this case, and it does not appear that the witness knows anything concerning the matter inquired about of his own personal knowledge.

A. Mr. Griswold told me—

By Mr. BICKFORD.—We object to that as hearsay.

(Testimony of John S. Miller.)

(Witness continuing:) He was going locating for him and working as a cruiser and a timber estimator. He wanted myself and wife to take up a claim—

By Mr. BICKFORD.—We object to the statements of the witness for the reason that it is irrelevant and immaterial and hearsay.

(Witness continuing:) I asked him what the proposition was, and he told me that—

By Mr. WALSH.—We object to that as it is clearly hearsay and it is also irrelevant and immaterial to the issues in this case.

(Witness continuing:) I would get a hundred dollars and all expenses paid and all I would lose was my time in going to prove up.

Q. Who was to furnish the funds?

By Mr. WALSH.—We object to that as it is clearly hearsay and it is also irrelevant and immaterial to the issues in this case.

A. Cobban was to furnish the money.

Q. Was to furnish the money for the locations?

By Mr. BICKFORD.—We object to that for the reason that it is irrelevant and immaterial and in no way affecting the defendant in this case.

A. Yes, sir.

Q. And who was to take the people to the lands?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial and hearsay, and having no bearing upon the issues in this case.

(Testimony of John S. Miller.)

A. That was the work that Griswold was to do in that section of the country.

Q. To find pieces of land, on which enough good timber could be found and then take the people there?

By Mr. BICKFORD.—We object to that as being leading and further upon the ground that it is irrelevant and immaterial to the issues and as hearsay.

A. Yes, sir.

Q. Anything said about the quantity of timber on the claims?

By Mr. WALSH.—We object to that also upon the ground that it is hearsay, and also that it is leading.

A. Anything over five hundred thousand on a hundred and sixty acres would be acceptable.

By Mr. WALSH.—We object to the statement of the witness as being irrelevant and immaterial and hearsay.

(Witness continuing:) At this fee, a hundred dollars and expenses on all claims.

Q. You may state whether or not you saw Mr. Cobban there at Mr. Griswold's place yourself?

A. I did.

Q. How did he come up there?

A. Well, that I couldn't say. I was in the saloon when he came in and I didn't notice how he came up.

Q. Did you see him have a conversation with Mr. Griswold? A. Yes, sir.

Q. How long was he there?

A. That I couldn't say exactly.

(Testimony of John S. Miller.)

Q. Well, I know, but about how long?

A. That afternoon Mr. Griswold had me attend to his place while he and Mr. Cobban went out. He came, I should think, it was a little later than dinner-time. Mr. Griswold, that afternoon asked me to take care of the place while he went out with Mr. Cobban.

Q. Then what?

A. In the afternoon, that afternoon, after he had been out was the time that he told me that I had better go and get a claim if I wanted one.

By Mr. BICKFORD.—We now move to strike out the latter part of the answer of the witness for the reason that it is hearsay.

Q. And at that time he told you what you have already testified to? A. Yes, sir.

Q. What did you do?

A. I told him I would let him know what I would do about it. That afternoon when we were talking about it. The next morning I told him I guess I wouldn't have anything to do with it.

Q. You refused to take up a claim under the proposition that Mr. Griswold made to you?

By Mr. WALSH.—We object to that as leading.

A. Yes, sir.

Q. You may state, Mr. Miller, why it was that you refused to take up a claim under the plan proposed by Mr. Griswold.

By Mr. BICKFORD.—We object to that because it calls for a conclusion of the witness and not for a state-

(Testimony of John S. Miller.)

ment of fact, and because it is irrelevant and immaterial.

A. The way I understood the act—I am not very well acquainted with it, but I thought it would be strictly against law governing claims to take it up with a prior agreement for sale, and I had no money to pay for it myself if I wanted to take it up.

Q. And you were unwilling for that reason to go into it, were you?

By Mr. BICKFORD.—That is objected to as leading.

Q. Did you so inform Mr. Griswold?

By Mr. BICKFORD.—That is also objected to as leading.

A. Yes, sir; I did.

Q. What did he state when you said that?

By Mr. WALSH.—We object to that also as being leading and upon the further ground that it is irrelevant and immaterial.

A. I believe he said you know your own business. I believe that is the answer he made me.

Q. Did you see Mr. Cobban at Mr. Griswold's place again? A. No, sir.

Q. Later on?

A. No, not after he went away that time, I did not.

Q. Now, then, I will ask you if you know Albert Jemison? A. Yes, sir.

Q. I will ask you if subsequent to this conversation with Mr. Cobban's agent, Mr. Griswold, you had a conversation with Mr. Cobban's agent, Mr. Jemison?

(Testimony of John S. Miller.)

By Mr. WALSH.—We object to that question as being leading and also as being irrelevant and immaterial, and as assuming a fact that has not been proven and has not been testified to, namely, that Mr. Jemison was Mr. Cobban's agent.

Q. Did you have such a conversation?

By Mr. WALSH.—We also object to that as leading. It is also irrelevant and immaterial and assumes a fact that has not been proven and has not been testified to by the witness, namely, that Mr. Jemison was Mr. Cobban's agent.

A. The next November, the following November; the first part of November, I think, I was talking to Albert Jemison.

Q. When and where—where was this conversation?

A. At nine mile prairie, a ranch that they were on. I was down there.

Q. State the conversation.

By Mr. BICKFORD.—We object to that, for the reason that it is hearsay and irrelevant and immaterial.

A. He told me at that time that he was working for Cobban, locating, and he told me also that I and my wife had better take up a claim, and he also told me that he was making good money out of it, was getting fifteen dollars for each location, and also told me that what I would get out of it was a hundred dollars and expenses, the same as Mr. Griswold had told me in the spring.

Q. Did he tell you who was to furnish the money?

By Mr. BICKFORD.—We object to that as being

(Testimony of John S. Miller.)

hearsay, and further that it is irrelevant and immaterial.

A. Yes, sir, he told me that I was to—well, the way I took it, to furnish my right.

By Mr. WALSH.—We object to this, for the reason that it is manifest that the witness is not giving the conversation, but is giving his deductions from the conversation.

Q. Just state it in your own way, Mr. Miller, just the conversation that you had with Mr. Jemison.

A. That I would prove up my right to the claim and have all expenses paid, and I would get a hundred dollars. All the time I would have to lose was coming over to prove up. The witness for us and everything was to be paid by Cobban.

Q. I call your attention to the subject, as to whether or not, at the time and place he stated to you, as to whether or not he had located people under that arrangement.

By Mr. WALSH.—We object to this upon the ground that it is hearsay, and further that it is irrelevant and immaterial, and that the conversation appears to have been had after the time when all the locations mentioned in the bill of complaint had been made and had been proven up, and further that it is leading.

A. He said he had some—had more applications for claims than he was able to get claims for. He had been working, I think the way he termed it all summer on that work, first for Mr. Griswold and then for Mr. Cobban.

Q. Working, what doing?

(Testimony of John S. Miller.)

A. At looking up land and locating for—

Q. Locating these people? A. Yes, sir.

Q. And he wanted you to go in, too, did he?

By Mr. WALSH.—We object to that as hearsay and also as leading.

A. Yes, sir.

Q. Did you go in? A. No, sir.

Q. Did you assign any reason for not going in with Mr. Jemison, or to Mr. Jemison?

A. I did not to him.

Q. Do you know why you didn't go in?

By Mr. BICKFORD.—We object to that as calling for a conclusion from the witness, and not for a statement of fact.

By Mr. MAYNARD.—I will withdraw that question.

Q. I will ask you as to whether or not the reason for declining to do as Mr. Jemison asked you to do was the same reason that you gave Mr. Griswold?

By Mr. WALSH.—That is objected to as being leading and as calling for a conclusion from the witness, and not a statement of fact.

A. Yes, sir.

Q. What was your answer? A. Yes, sir.

Q. That you were not willing to commit perjury?

By Mr. BICKFORD.—We object to that as being a deduction of counsel and not a statement of the witness.

A. Yes, sir.

Q. Was that the reason? A. Yes, sir.

(Testimony of John S. Miller.)

Q. You may state, Mr. Miller, as to whether before this time you had lived in the State of Minnesota.

A. Yes, sir.

Q. As to whether or not, while living in Minnesota, you knew of this same kind of deal taking place there?

By Mr. WALSH.—We object to that as calling for testimony concerning some other transaction than the one under investigation, and it is therefore entirely irrelevant and immaterial to any issues in this case.

Q. What is your answer to that, Mr. Miller?

A. Yes, sir, something similar to this investigation.

Q. As to whether or not, at that time, while you were living in Minnesota, when some similar transactions were taking place, you made any inquiry as to your legal rights in the matter.

By Mr. WALSH.—We object to that as calling for testimony concerning another transaction entirely foreign to the matter under investigation, and for the reason that it is therefore entirely irrelevant and immaterial, and has absolutely nothing to do with any of the issues in this case.

A. Yes, sir, I had.

Q. And because of the knowledge that you then acquired, was what led you to act as you did when Mr. Griswold spoke to you about it?

By Mr. WALSH.—We object to that as calling for a matter from the witness that has no bearing whatever upon the issues in this case, and it is therefore irrelevant and immaterial to any of the issues here.

(Testimony of John S. Miller.)

A. Yes, sir.

Q. Is that so? A. Yes, sir.

Cross-examination waived.

JOHN S. MILLER.

Subscribed and sworn to before me this seventh day of March, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

CHARLES CURRY, a witness called on behalf of the complainant, being first duly sworn by the Examiner, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Curry, what is your first name?

A. Charles Curry.

Q. Where are you living now? A. Sunset.

Q. Where were you living three years ago?

A. Up near Clearwater.

Q. Up near Clearwater? A. Yes, sir.

Q. Do you know Mr. Griswold? A. Yes, sir.

Q. You may state as to whether or not you knew of the business that he was engaged in at that time as to locating people under the Stone and Timber Act.

A. Well, I do.

By Mr. BICKFORD.—We object to the answer of the witness, and to the question propounded by counsel, for the reason that the same is irrelevant and immaterial to the issues in this case.

(Testimony of Charles Curry.)

By the EXAMINER.—Well, let him go on and finish his answer. What was your answer?

A. I heard that he was employed in that business locating claims.

By Mr. BICKFORD.—We object to the answer of the witness and move to strike the same from the record, for the reason that it is clear hearsay testimony.

Q. State in your own way, Mr. Curry, just exactly what you know about the matter, and whether you went to see Mr. Griswold in regard to locating you, and what you said to him, and so on. Go on and give us it as exactly as you can.

A. I understood that Mr. Griswold was locating claims, and I went up to see him, to see if he couldn't give me a location, and locate a claim for myself and my wife.

By Mr. BICKFORD.—We move to strike out the answer of the witness for the reason that it is hearsay.

(Witness continuing:)—and he told me that he was trying to get me a claim.

By Mr. BICKFORD.—We move to strike out the answer of the witness for the reason that it is hearsay.

Q. Do you know what you could get for your claim after you had proved up on it?

A. Well, I had understood that I could get a hundred dollars.

By Mr. BICKFORD.—We move to strike out the answer of the witness upon the ground that it is not re-

(Testimony of Charles Curry.)

sponsive, and further that witness states a conclusion of his own and not a statement of any fact.

Q. Had you heard that prior to going to Mr. Griswold?

By Mr. BICKFORD.—We object to that upon the ground that it is hearsay and irrelevant and immaterial.

A. Yes, sir.

Q. Who did you hear that from, Mr. Curry?

A. Mr. Standrich.

Q. Who was he?

A. He was a young man that had a place around there and I was working for him, I and my wife was keeping house for him at that time.

Q. He told you that you both could make a hundred dollars apiece?

By Mr. WALSH.—We object to that for the reason that it is leading.

A. Yes, sir.

By Mr. WALSH.—We object to the question and we also move to strike out the answer of the witness for the reason that it is hearsay and irrelevant and immaterial.

Q. He told you that you could get a hundred dollars apiece did he?

By Mr. WALSH.—We object to that for the reason that it is leading and irrelevant and immaterial and hearsay.

A. Yes, sir.

(Testimony of Charles Curry.)

Q. Did he tell you who you could get the money from, or who you could make this arrangement with?

By Mr. WALSH.—We object to that as being irrelevant and immaterial and hearsay.

A. He said that we could get the money from Mr. Cobban.

Q. So after receiving this information from the man with whom you were working you went over to see Mr. Griswold.

By Mr. WALSH.—We object to that as leading.

A. Yes, I and Mr. Standrich went up to see Mr. Griswold.

Q. Did you know who Mr. Griswold was working for?

A. I had understood that he was employed by Mr. Cobban.

By Mr. BICKFORD.—We now move to strike out the answer of the witness for the reason that the witness says he understood that he was employed by Mr. Cobban and such statement is not a statement of fact.

Q. What did Mr. Griswold say when you applied to him for a claim, for a location under those conditions?

By Mr BICKFORD.—We object to that as being hearsay.

A. I only talked with him a short time and I asked him if he could get us a claim and he said he thought he could. That is all the conversation I had with Mr. Griswold.

Q. Do you remember as to whether or not you stated

(Testimony of Charles Curry.)

to him that if he would locate you, you would be willing to give him some portion of your hundred dollars.

By Mr. WALSH.—We object to that as leading.

A. Yes, sir, I did.

Q. How much did you tell him that you would give him for the hundred dollars that you were to receive from Mr. Cobban?

By Mr. WALSH.—Objected to as being a statement of the counsel and not testimony of the witness, and that the same calls for hearsay testimony and is irrelevant and immaterial.

A. I told him I would pay him for locating me. I didn't tell him what amount that I would give him if I remember.

Q. But he didn't locate you? A. No, sir.

Q. Do you know the reason?

A. No, sir, I do not, only that there was so many others I suppose who had spoken to him before I saw him, that he was not able to locate me.

By Mr. WALSH.—We move to strike out the answer of the witness for the reason that it is something that he is supposing and not something that he knows of his own knowledge and as giving the opinion of the witness or his supposition rather than a fact which is pertinent to the issues in this case.

(Testimony of Charles Curry.)

Cross-examination.

(By Mr. BICKFORD.)

Q. You are a citizen of the United States, are you, Mr. Curry? A. Yes, sir.

Q. And over twenty-one years old.

A. Yes, sir.

Q. And were over twenty-one years old in 1899?

A. Yes, sir.

Q. Had you ever used your timber right in any way?

A. No, sir.

Q. Hadn't at the time when you made your application to Mr. Griswold or at the time when you contemplated making a timber and stone claim intended to commit perjury in doing so, had you?

A. No, sir, I had not in the least.

Q. Now state when it was that you had this conversation with Mr. Griswold.

A. It was in July, I think.

Q. Of the year 1899?

A. Yes, sir, I think it was.

CHARLES CURRY.

Subscribed and sworn to before me this seventh day of March, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

B. FRANK CHATTIN, a witness called by the complainant, after being first duly sworn by the Examiner, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Chattin, what is your full name?

A. B. Frank Chattin.

Q. How old a man are you, Mr. Chattin?

A. Twenty-eight years old.

Q. Where do you live?

A. I live about three miles north of Missoula.

Q. How long have you lived there?

A. At my present place, I have lived about—well, not quite—it will be a year in April.

Q. Are you a married man? A. No, sir.

Q. A single man? A. Yes, sir.

Q. What is your present place?

A. Why, I have about fourteen acres, just rented.

Q. You rent a place of about fourteen acres?

A. Yes, sir.

Q. You are baching it there, are you?

A. No, sir, a partner of mine lives with me with his family.

Q. A man? A. A man and his family.

Q. You are living with your partner and his family then? A. Yes, sir.

Q. Where did you live before you went to this fourteen acre place. A. Lived with my brother.

Q. Whereabouts?

(Testimony of B. F. Chattin.)

A. Well, just about a mile and a half from Missoula on the Rattlesnake, what we call Park Addition.

Q. How long did you live there?

A. About five years.

Q. What did you do?

A. Well, I done all kinds of work, team work mostly.

Q. Team work? A. Yes, sir.

Q. In the city?

A. In the city and outside, both.

Q. What are you doing on this fourteen acre tract?

A. Raising strawberries.

Q. You and your partner are renting this place of fourteen acres? A. Yes, sir.

Q. What did you do in the five years preceding the time you worked for your brother?

A. I went to school most of the time. That was before I—

Q. Where did you go to school?

A. In Missouri, in the East.

Q. When did you move from Missouri to Montana?

A. It is about six years ago.

Q. Who did you come with?

A. My father.

Q. Who else? A. Nobody.

Q. All these years' time that have elapsed has been covered by the residence at these two places that you have told about? A. Yes, sir.

Q. Do you own any other interest in any of these properties?

(Testimony of B. F. Chattin.)

A. I own a twelfth interest in these fourteen acres.

Q. A twelfth interest in these fourteen acres?

A. Yes, sir.

Q. And what other interest do you own?

A. I own a fourth interest in 160 acres also.

Q. A fourth interest in 160 acres besides?

A. Yes, sir.

Q. Where is it?

A. About twelve miles west of Missoula.

Q. Who owns the other interests?

A. My father and brother.

Q. Is it a homestead claim?

A. No, sir, we bought it and paid for it.

Q. How much did you pay for it?

A. Twelve hundred dollars.

Q. And you own a fourth interest in that twelve hundred dollar piece of land and a twelfth interest in this fourteen acre tract?

Q. Own anything else?

A. I own a team.

Q. You own a team besides? A. Yes, sir.

Q. You were living with your brother at the time you took up this stone and timber claim?

A. Yes, sir.

Q. I wish, Mr. Chattin, that you would go on now in your own way and state how it was that you came to take up this timber claim. Tell us the circumstances, all the way from the beginning to the end.

A. Well, I saw by the papers that people were tak-

(Testimony of B. F. Chattin.)

ing up claims under the Stone and Timber Act and that I had the same right and so I thought I would take one up too, if I could get one, so I went up there to see about it. There was a man up there locating claims. He located me on a claim.

Q. What is that?

A. He located me on a claim and I filed on one and after that I borrowed the money and paid for it and got my final receipts, gave the final proofs and then I sold it.

Q. Who did you sell it to?

A. I sold it to R. M. Cobban.

Q. How much money did you make in advance over and above what was paid for it?

A. I got about a hundred dollars.

Q. Who first spoke to you about this matter?

A. I don't know as anybody did.

Q. What?

A. I don't know as anybody did. I first saw it in the paper? That is, that people were taking up claims under the Stone and Timber Act.

Q. You saw that in the paper, you say?

A. Yes, sir.

Q. What paper?

A. I think it was in the "Anaconda Standard."

Q. What was that?

A. I think it was in the "Anaconda Standard" or in the "Missoulian."

Q. Well, tell us what you saw there?

(Testimony of B. F. Chattin.)

A. Well, I saw where claims was advertised that had been taken up and how they were taken up.

Q. Well, what did you read about it, about how they were taken up, what did you read about that?

A. Well, that they were paying two dollars and a half for it per acre.

Q. Well go on?

A. Well, that is all there is to it, I paid the government price for it.

Q. When did you see that in the "Anaconda Standard"?

A. Oh, I don't know just when it was, I never made any memorandum of it. I didn't think there was any use of it.

Q. And have you stated now your best recollection of what you read? A. Yes, sir.

Q. And that is what led you to leave your brother in Missoula and go up in the mountains?

A. Yes, sir.

Q. Who did you go with?

A. There were several of us went together. My father went along and a man by the name of White, and another man by the name of Pelky.

Q. What is your father's name?

A. H. C. Chattin.

Q. Henry C. Chattin? A. Yes, sir.

Q. What is this other man's name?

A. White.

Q. What is his first name? A. John.

(Testimony of B. F. Chattin.)

Q. John White? A. Yes, sir.

Q. Did he take up a claim?

A. Yes, sir, I understood he took up a claim.

Q. And Thomas Pelky, did he take up a claim?

A. Yes, sir.

Q. And who else?

A. That was all, I think, that was along with us besides the driver from the livery-stable where we hired the rig to take us up there. I don't know who he was.

Q. You four men went up there to take up claims, did you?

A. Mr. Pelky didn't go along. That is, we hired a rig, but he went up on the stage.

Q. And you drove up all the way in the mountains with your own conveyance that you got in Missoula?

A. Yes, sir.

Q. Anybody else went along? A. No, sir.

Q. Nobody else went along? A. Nobody else.

Q. Did you have any dealings at all with Mr. Cobban previous to going up there? A. No, sir.

Q. No deal at all? A. No, sir.

Q. Or with Major Catlin? A. No, sir.

Q. Or anyone else? A. No, sir.

Q. I want to understand now if you had anything to do with Mr. Cobban or Mr. Catlin or anyone else representing Mr. Cobban when you went up with these men that you have named, went up into the mountains with these men that you have named, to make this location?

A. No, sir.

(Testimony of B. F. Chattin.)

Q. With the knowledge that you had on the subject or information of any kind other than you have now stated that you read in the "Anaconda Standard"?

By Mr. WALSH.—We object to the question as being leading and irrelevant and immaterial.

A. What I got in the papers?

Q. In the "Anaconda Standard"?

A. Yes, in the "Anaconda Standard," and in the "Missoulian," I don't know whether it was one or the other. It might have been both of them.

Q. Have you any recollection now, as to what you read in the "Missoulian"?

A. No, sir, nothing more than what I have told you.

Q. You didn't read anything about that that Mr. Cobban was buying the land in there, did you?

A. Not at that time.

Q. Not when you went up there?

A. No, sir.

Q. Nor from anybody in the city of Missoula?

A. No, sir, nor anybody in the city of Missoula.

Q. You didn't know what you were going to do with it after you got it?

A. Well, not in particular—not with any particular idea, no.

Q. No particular idea?

A. Nothing, only I was going to make all I could out of it, that was all. Use it to the best advantage to "profigate" myself.

Q. What?

(Testimony of B. F. Chattin.)

A. I was going to use it to the best advantage to "profigate" myself.

Q. Well, where did you go when you left your conveyance?

A. The first place I went was to the hotel to get my supper.

Q. Who was keeping the hotel at that time?

A. I think Mr. Griswold was, I am not sure.

Q. Well, you know he was, don't you?

A. No, I don't know it, and I didn't know it then.

Q. You saw him there?

A. I saw him there, yes.

Q. Was the location made before the next day?

By Mr. WALSH.—We object to that as leading and immaterial and irrelevant.

A. No, sir.

Q. Who were in the party when the location was made?

A. There was Thomas Pelkey and myself and the man that located us.

Q. And his name was Mr. Gillis, wasn't it?

By Mr. WALSH.—We object to that also as leading.

A. I couldn't tell you whether it was or not. I wasn't—I wouldn't know the man if I should see him. I never heard his name that I know of.

Q. You never heard his name, and don't know him at all?

By Mr. WALSH.—We object to the question as being leading and irrelevant and immaterial.

(Testimony of B. F. Chattin.)

A. No, sir.

Q. Never had seen him before?

By Mr. WALSH.—We object to the question as leading and as irrelevant and immaterial.

A. No, sir, I never seen him before.

Q. Where is Thomas Pelky? A. I don't know.

Q. Did you know him? A. I did.

Q. How long had you known him?

A. Well, some three or four years. I don't know just how long.

Q. So the next morning after you arrived at the Clearwater, you and Thomas Pelkey started off with this unknown man?

By Mr. WALSH.—We object to that as being leading.

A. Yes, sir.

Q. You know Pelky, you say? A. Yes, sir.

Q. But you didn't know this other man?

A. No, sir.

Q. Did Pelkey know him?

A. Yes, sir, Pelkey knew him. Pelkey seemed to know him, but I did not.

Q. You got your location, did you?

By Mr. WALSH.—We object to the question as leading.

A. Yes, sir.

Q. Do you know where your father went?

A. No, sir, I do not.

Q. He didn't go with you, did he?

(Testimony of B. F. Chattin.)

A. No, sir, he didn't go with me.

Q. Where was he?

A. He was there at the hotel when I left.

Q. When you left to go to your location?

A. Yes, sir.

Q. Had you ever been up there before?

A. No, sir.

Q. What did you say? A. No, sir.

Q. How far was this place from your home?

A. Which do you mean?

Q. Where you were living with your brother?

A. Which place do you mean, the place we took up or—

Q. No, at Clearwater?

A. It is about forty miles, I should say.

Q. When did you leave to go back to your home?

A. I think we left about four o'clock in the evening—started back about that time.

Q. So you were at Clearwater about twenty-four hours? A. Yes, just about.

Q. In the meantime you had stayed over night and had your breakfast and gone and made your location and come back to Blackfoot?

By Mr. WALSH.—We object to that as leading.

A. Yes, sir.

Q. That is the way it is, isn't it?

By Mr. WALSH.—We object to that as leading.

A. That is the way of it, yes.

Q. If you came as a boy from Missouri and moved

(Testimony of B. F. Chattin.)

directly to your brother's place and worked there in Missoula you had had no experience at all in timber—buying timber, had you? A. No, sir.

Q. Never had worked in the woods?

By Mr. WALSH.—We object to that as leading.

Q. Well, now state what these men that took you and Pelkey up there—state just what you three did?

A. Well, we rode about fifteen miles the first thing we done.

Q. How did you go? A. On horseback.

Q. Oh, all of you on horseback. You went fifteen miles from where?

A. From Clearwater. Clearwater postoffice.

Q. Where you were stopping? A. Yes, sir.

Q. Then what did you do?

A. Well, when we got to the proper place we tied our horses up and struck out to the land. Went up to the corners and look it over and looked at our plot and saw what claims were not taken up. We looked our claims over and drove our stakes up and then went back to where our horses were tied.

Q. What is that?

A. We went back to where our horses were tied and had our dinner.

Q. What kind of a place was it that was fifteen miles from Clearwater?

A. It is right at the top of a hill on the side.

Q. It is on the mountain side? A. Yes, sir.

(Testimony of B. F. Chattin.)

Q. How high would you say this mountain side was from the base up to the summit?

By Mr. WALSH.—We object to that as being irrelevant and immaterial.

A. I never was up to the summit. I don't know how far it was.

Q. Well, it was covered with timber, wasn't it?

A. Yes, a dense growth of timber.

Q. Were there any roads cut through at all that you could see? A. Not a road.

Q. In a state of nature, was it not?

A. Yes, sir.

Q. Well, now, if you went fifteen miles there, then you of course had to come back fifteen miles?

A. Yes, sir.

Q. How long were you on the ground?

A. Well, I should judge an hour.

Q. And where was Pelkey's piece of ground?

A. Our claims cornered.

Q. Your claims cornered?

A. Yes, sir, I believe they do corner.

Q. And those were pointed out to you by Mr. Gilles, as I understand it?

A. I don't know whether it was his name or not. Our guide or locator or whatever you want to call him.

Q. Did I understand you to say that you hadn't seen Mr. Griswold at the tavern before you started out?

A. I saw Mr. Griswold, yes.

Q. Previous to your going out? A. Yes, sir.

(Testimony of B. F. Chattin.)

Q. Did you have any conversation with him?

A. No, sir.

Q. No talk at all?

A. No, sir, no talk at all.

Q. Are you able to state as to whether this guide or locator that went with you was sent by Mr. Griswold?

By Mr. WALSH.—We object to that as leading.

A. He wasn't, as I know of.

Q. You don't know whether he was or not?

By Mr. WALSH.—We object to that as being irrelevant and immaterial and leading.

A. No, sir, I don't know that he was.

Q. You are unable to state as to whether at that time this man who was with you was John Gillis, and whether or not he was then and there in the employ of Mr. Griswold for this very purpose?

By Mr. WALSH.—We object to that as being leading and further upon the ground that it is irrelevant and has no bearing upon any of the issues in this case.

A. I don't know.

Q. You know nothing about that?

By Mr. WALSH.—We object to that as leading and as irrelevant and immaterial.

A. No, I don't know anything about his business at all.

Q. Mr. Griswold didn't go with you?

A. No, sir.

Q. The only persons that were with you on this trip

(Testimony of B. F. Chattin.)

was this locator or guide that you had with you that you didn't know and Mr. Pelkey?

By Mr. WALSH.—That is objected to as leading and irrelevant and immaterial.

A. Yes, sir.

Q. In the afternoon you say that you left and started for home? A. Yes, sir.

Q. How soon thereafter did you go to the land office?

A. I think that I came to Helena the next day after I arrived home, to file.

Q. Did anybody come with you?

A. Mr. Pelkey came with me.

Q. Who else?

A. I believe that Mr. Cobban came along.

Q. Well, you know that he did, do you not?

By Mr. WALSH.—We object to that as being leading.

A. Yes, Mr. Cobban came on the same train.

Q. Who else? A. That is all.

Q. What time did you get here?

A. I don't remember what time I did arrive here, along about two o'clock—two or three o'clock, I think.

Q. Did you go to the land office that same afternoon?

A. Yes, sir.

Q. Did Mr. Cobban go with you?

By Mr. WALSH.—We object to that on the ground that it is leading.

A. I don't think he did. I think Mr. Pelkey and I went ourselves. We went out and hunted him up to

(Testimony of B. F. Chattin.)

find out who to get to make out our papers. We found Mr. Cobban and he said that he could make them out.

Q. Mr. Cobban said that he could make them out?

A. Yes, sir, he said that he could make them out. He went back with us and made out the papers.

Q. He went to the land office with you and made out the papers, did he?

By Mr. WALSH.—We object to that as leading.

A. Yes, sir.

Q. He wrote out the papers for you, did he?

By Mr. WALSH.—We object to that as leading.

A. Yes, sir, he made out our filing papers.

Q. I show the witness this statement that he then made, the original statement, and I ask him if he can recognize that as his signature. (Counsel hands witness papers in connection with his entry.)

A. Yes, sir.

Q. B. Frank Chattin, that is it, is it?

A. Yes, sir.

Q. And this is filled out in the handwriting of Mr. Cobban (referring to the papers in connection with the entry of the witness). A. Yes, sir.

Q. I read, "Helena, Montana, May 27th, 1899. I, B. Frank Chattin, of Missoula, County of Missoula, State of Montana, desiring to avail myself of the provisions of the act of Congress of June 3d, 1878, entitled 'an Act for the sale of timber lands in the States of California, Oregon, Nevada and in Washington Territory as ex-

(Testimony of B. F. Chattin.)

tended to all the public land states by Act of August 4, 1892,' for the purchase of the southeast quarter of the northeast quarter and the east half of the southeast quarter and the northwest quarter of the southeast quarter of section ten in township 14, north range 13 west in the district of lands, subject to sale at Helena, Montana."

Q. Who did you say wrote up Mr. Pelkey's statement?

A. I think that Mr. Cobban wrote them both up.

Q. Wrote them both out? A. Yes, sir.

Q. When did you, after making these filings, when did you return to your home?

A. I returned home that night.

Q. That same night? A. Yes, sir.

Q. What did you do during the sixty days that elapsed?

A. I went back home and went to work.

Q. Did you have anything to do with the proceedings in the meantime, anything about the advertising?

A. No, sir. Well, of course I advertised. The place was advertised here from the land office.

Q. Yes, but you had nothing to do with it did you?

A. No, sir.

Q. But, on the day it came to make your final proofs you came back again did you? A. Yes, sir.

Q. How many times had you seen Mr. Griswold previous to your meeting him at the Clearwater?

A. I had never seen him before.

(Testimony of B. F. Chattin.)

Q. You had never seen him before?

A. No, sir.

Q. You never knew there was such a man?

A. No, sir, never knew there was such a man on earth.

Q. How many times did you see him afterwards, after you returned home?

A. I never saw him at all until I came back up here to Helena to prove up.

Q. That was the second time in your life that you had ever seen him to know him?

A. Yes, sir, to my knowledge.

Q. Where was it that you first saw him at the time that you came to prove up?

A. Right here in Helena.

By the EXAMINER.—We will now take a recess until two o'clock P. M.

Thursday, March 6th, 1902, 2 P. M.

Hearing resumed.

B. F. CHATTIN, a witness on behalf of the complainant, being called for further examination, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Who did you say that you came from Missoula with? A. What time?

Q. The time of making your final papers?

A. I came by myself.

(Testimony of B. F. Chattin.)

Q. I desire to ask you, first, since we adjourned this morning for dinner, have you talked with Mr. Walsh?

A. No, sir.

Q. And with Mr.—the other counsel here?

A. No, sir.

Q. With no one?

A. With Mr. Cobban. I talked with Mr. Cobban going up the street; we walked up the street together.

Q. You had a talk with him?

A. Yes, nothing to have anything to do with this case, not a thing.

Q. Not a thing? A. No, sir.

Q. How long were you with him?

A. Probably five minutes.

Q. Did you go to the same hotel with him?

A. No, sir.

Q. You say that you came alone from Missoula?

A. Yes, sir.

Q. Didn't you say before noon that you came with Mr. Pelky? A. No, sir.

Q. At the time of the final proof?

A. At the time of the final proof I came by myself; I came a day ahead.

Q. Who came the next day?

A. Mr. Pelky, and Mr. Griswold.

Q. Where did you see Mr. Griswold?

A. At the depot.

Q. The day before? The day you started for Helena?

(Testimony of B. F. Chattin.)

A. No, sir, I didn't see him at all before I started.

Q. When did you say you saw him?

A. I saw him at the depot here in Helena.

Q. When he left?

A. When he left, down there at the depot when the train came in.

Q. You went there to meet him?

A. No; I did not go to meet him. I went to meet Mr. Pelky; I knew he was coming.

Q. That was the second time in your life that you ever saw Mr. Griswold? A. I think so.

Q. When you met him at the depot here in Helena?

A. Yes, sir.

Q. Where did you go? A. I went to the hotel.

Q. All three of you?

A. No; Mr. Pelky and I went to the hotel together.

Q. When did you go to the land office?

A. I went the next morning.

Q. Who went?

A. Mr. Pelky, Mr. Griswold and I.

Q. You three?

A. Yes, sir; Mr. Griswold met us at the land office.

Q. Is that your best recollection of that?

A. Yes, sir.

Q. That he met you there at the land office?

A. Yes, sir.

Q. Did you expect to meet him there?

A. Yes, sir.

Q. Why?

(Testimony of B. F. Chattin.)

A. Why, I had made arrangements with Mr. Cobban before I left to borrow the money to pay for this claim, he was to send it up by Mr. Griswold, I was to meet Mr. Griswold at the land office, to get the money to pay for it.

Q. When had you seen Mr. Cobban?

A. I do not know just when it was, some three or four days before I started up here to make my final proof.

Q. Which is the first time that you had ever seen him?

A. The first time I had ever saw him, I had seen him on and off for three or four years.

Q. The first time you had ever seen him in connection with this business? A. Yes, sir.

Q. Where did you see him? A. In his office.

Q. Who was with you?

A. Nobody here but myself.

Q. How did you happen to go to Mr. Cobban's office?

A. I knew he was loaning money, I went there and borrowed it of him.

Q. That was the first time you ever had any talk with him, or with Mr. Catlin or anybody representing him?

A. Yes, sir.

Q. What did he say to you?

A. He said he would let me have the money.

Q. Send it up by Mr. Griswold?

A. Send it up by Mr. Griswold, yes; I told him I was going a day ahead.

Q. He said he would send it up by Mr. Griswold? What do you understand that Mr. Griswold had to do with it?

(Testimony of B. F. Chattin.)

Mr. BICKFORD.—Objected to as being immaterial, irrelevant and incompetent; calling for testimony concerning no fact.

A. I did not understand that he had anything to do with it, only to bring the money up.

Q. You had never heard in your life before that Mr. Griswold had had any relations or business connection with Mr. Cobban?

Mr. BICKFORD.—Objected to as leading.

A. No, sir.

Q. He had never done anything or said anything before this to lead you to believe he was working for Cobban?

By Mr. BICKFORD.—Objected to as leading.

A. No, sir; he had not.

Q. You had not up to this time received any money whatever from Mr. Cobban or anybody else?

A. No, sir; I had not.

Q. Who paid the money into the Land Office?

A. Mr. Griswold.

Q. So you did not receive any money on that day?

A. No, sir; the money was in the bank, he put the money in the bank, and we could not get it out until the bank opened, we wanted to catch the train back home; we left the matter with Mr. Griswold to get the money.

Q. Who were "we"? A. Pelkey and I.

Q. The facts of the Pelkey case the same as yours?

By Mr. BICKFORD.—Objected to as leading and calling for a conclusion of the witness.

(Testimony of B. F. Chattin.)

A. Yes, sir.

Q. Did you go back home on the morning train?

A. Back to Missoula?

Q. Back to Missoula? A. Yes.

Q. That leaves here about eleven?

A. I do not remember what time it left here then.

Q. Do you remember that it was before dinner?

A. Before dinner; yes, sir.

Q. So all you had to do at the land office was simply to go there with Pelkey and fill out the blanks on the final proof and then go home?

By Mr. BICKFORD.—Objected to as leading.

A. Yes, sir.

Q. Then you did do it?

By Mr. BICKFORD.—Objected to as leading.

A. Yes, sir.

Q. What money did you pay out for expenses up to this time?

By Mr. BICKFORD.—Objected to as immaterial and irrelevant.

A. I have paid out money for railroad fares and board bill, hotel bills.

Q. Here?

A. Here; and for the trip up the Blackfoot.

Q. That was then your own money?

A. Yes, sir; with my own money.

Q. You did not borrow that from anybody?

A. No, sir.

Q. How much was that?

(Testimony of B. F. Chattin.)

By Mr. BICKFORD.—Objected to as leading.

A. Altogether amounts up to about fifty dollars.

Q. Your expenses? A. Yes sir.

Q. You think it was fifty dollars?

A. I think it would probably amount up to that much, that it, expenses on the way there, hotel bills, railroad fare, fees at the land office.

Q. That money was for your personal expenses, hotel bills, traveling, you paid out yourself?

A. Yes, sir.

Q. And when you conveyed this land to Mr. Cobban, you were allowed your expenses, were you not?

By Mr. BICKFORD.—We object to that as leading; as irrelevant and immaterial.

A. Yes, sir.

Q. How much did you receive from Mr. Cobban over and above expenses? A. About a hundred dollars.

Q. Who was that met you at the office?

A. At the time I received the money, you mean?

Q. Yes? A. Nobody.

Q. Was Mr. Pelkey in town that day?

A. I do not know whether he was or not.

Q. How long was it after you returned from Helena on this occasion you have testified about before you conveyed the land to Mr. Cobban?

A. Well, it was within a week.

Q. Are you able to state just how long it was?

A. No, sir.

(Testimony of B. F. Chattin.)

Q. What did you do during this time that elapsed after you returned to Missoula and before you conveyed to Cobban? A. I was working.

Q. Working at what?

A. I don't know what I was working at, I don't know —I could not swear to that.

Q. Did you go to Mr. Cobban's office before he sent for you? A. He never sent for me.

Q. But as soon as—the afternoon that you got home you went to his office and sold it to him?

By Mr. BICKFORD.—Objected to as leading.

A. I went to his office to fix up about this borrowed money, and while there he made this offer to me.

Q. And you received this hundred dollars and your expenses?

By Mr. BICKFORD.—Objected to as leading.

A. Yes, sir.

By Mr. MAYNARD.—I show the witness his testimony that he gave in his application and ask him.

Q. If that is your signature? A. Yes, sir.

Q. That is your signature?

A. Yes, sir; that is my signature.

Q. And that, you see, was acknowledged by you on the 15th of August, 1899? A. Yes, sir.

By Mr. MAYNARD.—I show now the witness a certified copy of his deed which has been received in evidence in this case. And you see that this indenture—the date

(Testimony of B. F. Chattin.)

of it was the 16th of August; that was the next day after you made your final proof?

(No answer.)

Q. Now, do you know how this came to be dated on the 16th, the next day? A. No, sir; I do not.

Q. You don't know anything about it?

A. No, sir.

Q. The deed that you signed, was it prepared for you in the land office, was it already prepared and you signed it?

By Mr. BICKFORD.—We object to this as leading.

A. I do not remember.

Q. It may have been prepared before you went there?

By Mr. BICKFORD.—We object to this as leading.

A. Yes, it may have been.

By Mr. MAYNARD.—I read from the deed: "This indenture made the 16th day of August in the year of our Lord, one thousand eight hundred and ninety-nine, between B. Frank Chattin, an unmarried man, of Missoula, Montana, party of the first part and Robert M. Cobban of Missoula, Montana, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one thousand dollars to him in hand paid, does by these presents grant, et cetera, the following real property situate in Deer Lodge County, State of Montana, described as follows:

The south half of the northeast quarter, the northwest quarter of the southeast quarter, and the east half of the

(Testimony of B. F. Chattin.)

southwest quarter of section ten, township fourteen north of range thirteen west."

It appears that the acknowledgment was not made until the 23d of August. I read:

"State of Montana,
County of Missoula. } ss.

On this twenty-third day of August, in the year one thousand eight hundred and ninety-nine before me, Wallace P. Smith, a notary public in and for the county and state aforesaid, personally appeared B. Frank Chattin, a single man, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my notarial seal on the day and year first above written.

WALLACE P. SMITH."

By Mr. WALSH.—We move to strike this out as being no question propounded to the witness and no answer made by the witness.

Q. Can you give any explanation why this deed was dated on the 16th of August, the day after you made your final proof, and the acknowledgment of the same was not until the 23d? A. No, sir.

Q. You are unable to give any explanation?

A. No, sir; I do not remember anything about it.

Q. Do you know what the value of the timber was on this claim?

(Testimony of B. F. Chattin.)

A. I should judge it was worth a thousand or twelve hundred dollars.

Q. You say that you had never been up there before?

A. No, sir.

Q. Had never had any experience in lumbering of any kind?

A. Not in lumbering, I had gotten out cordwood.

Q. And all the knowledge you had of this location was the hour or so you spent in looking at it?

A. Yes, sir.

Q. As a matter of fact you didn't know much about its value? A. I am not an estimator of timber.

Q. And you and Pelkey and this unknown man that led you there were the only parties present?

A. I believe so, yes.

Q. You know that, don't you? A. Yes.

Q. Now state how it is that Mr. Griswold was one of your witnesses?

A. Well, he was there at the Clearwater at the time when we started.

Q. Yes; he stayed at his hotel?

(No answer.)

Q. Can you explain how it was that Mr. Griswold came here to Helena as one of your witnesses?

A. No; I do not remember just how it was now.

(Testimony of B. F. Chattin.)

Cross-examination.

(By Mr. BICKFORD.)

Q. You said I believe that your estimate of the value of the timber was between a thousand and twelve hundred dollars? A. Yes, sir.

Q. Was that estimate you make at this time or the one that you made when you were on the land?

A. At the time I was on the land.

Q. Then did you know of anybody that would be willing to pay twelve hundred dollars for it?

A. No, sir.

Q. It would not bring twelve hundred dollars in the open market? A. I do not believe so.

Q. You mean with the timber cut and ready for market? A. Yes, sir; that is what I meant.

Q. Now, Mr. Chattin, it would cost six or seven hundred dollars to cut the timber and have it ready for market? A. Yes; it would cost all of that.

Q. I will ask you to state whether or no you had ever made a timber entry before? A. No, sir; I had not.

Q. You were a citizen of the United States?

A. Yes, sir.

Q. Qualified under the laws of the United States to make a timber and stone entry, an entry under the Timber and Stone Acts? A. Yes, sir.

Q. At the time when you went up there at the Blackfoot and selected this tract of land that you mentioned as having selected, had you talked with anybody about making the entry, or had you had any conversation with

(Testimony of B. F. Chattin.)

anybody as to the value of the land after it had been selected? A. No, sir.

Q. When you went upon the ground to look the land over did you make an effort to select as good a piece of ground as you could find, as good a piece of timber?

A. I did.

Q. Was the timber land you selected valuable for anything else except timber?

A. Nothing else only the timber.

Q. Why do you say it was valuable only for the timber contained on it?

A. In the the first place it could not be irrigated, the timber was all that was on it that was any good.

Q. Do you have to irrigate in that section of the country? A. I should judge so.

Q. You do in all parts of the State of Montana west of the range? A. Yes, sir.

Q. And so you went with a man by the name of John White and Tom Pelkey? A. Yes, sir.

Q. Where did Pelkey and White live, with you?

By Mr. MAYNARD.—I obejct to that because he said he did not know the man and did not know his name or anything about it.

A. Pelkey and White lived there close to Missoula on the Rattlesnake in the same neighborhood that I did.

Q. Where did H. C. Chattin live?

A. He lived the same place as I did.

Q. As I understood you, you said he was your father?

(Testimony of B. F. Chattin.)

A. Yes, sir.

Q. How long were you on the claim looking it over, do you imagine?

A. My best judgment, about an hour.

Q. You were there long enough so as to look over every part of it?

A. Yes, sir; I was over the four corners, all over it.

Q. You saw then the government marks on the land which designated the land it was? A. Yes, sir.

Q. Now, I believe you said in your examination in chief that you had never seen Mr. Griswold before that time when you went to the Clearwater?

A. No, sir, I had not.

Q. Had you ever had any talk with Griswold before this day? A. No, sir.

Q. Did you ever have any talk with Griswold about selling this land, disposing of it? A. No, sir.

Q. Did you make any agreement with Griswold to sell the land to anybody for him? A. No, sir.

Q. Made no arrangements that he should sell the land for you? A. No, sir.

Q. Speaking about Griswold being your witness at the time of final proof, is it not a fact that Griswold was your witness because he knew the country and the land that you were about to enter? A. Yes, sir.

Q. Then your other witness was also your witness because he knew the character of the land you wanted to enter? A. Yes, sir.

Q. And could testify understandingly concerning it?

(Testimony of B. F. Chattin.)

A. Yes, sir.

Q. At the time when you made this entry of timber land, in addition to the statements read by the gentleman upon the other side you stated as follows:

"That I have made no other application under said act; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and not for the benefit of any other person, and that I have not directly or indirectly made any agreement or contract in any way or manner with any person or persons whomsoever by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any other person except myself."

Q. Was that true at that time, Mr. Chattin?

A. That was true at that ime.

Q. Now, question number 12, the question is asked you at the time when you made your final proof here in Helena as follows:

"What is the estimate of market value of the timber standing upon this land. Answer: From seven hundred dollars to eight hundred dollars."

Q. Was that approximately correct or as near correct as you could estimate it at that time?

A. Yes, sir.

Q. You were asked the following question: "Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way

(Testimony of B. F. Chattin.)

or manner with any person whomsoever by which the title which you may acquire from the Government of the United States may inure in whole or in part to the benefit of any other person except yourself"—to which you answered, "No, sir";

Q. Was this answer true? A. It was.

Q. And you were asked this question No. 14: "Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person"—to which you answered, "I do."

Q. Was that answer correct? A. It was.

Q. Question No. 15: "Has any other person than yourself or has any firm, corporation or association any interest in the entry you are now making or in the land or in the timber thereon" to which you answered, "No, sir." Was that corect? A. It was.

Q. Now, at the time when you went to Mr. Cobban to borrow the money with which to make your final proof upon this land, did you at that time make any bargain or agreement with him to sell the land?

A. I did not.

Q. When was the first time that you talked with Mr. Cobban concerning the sale of this land?

A. Well, it was after I made the final proof and went back to Missoula to see about fixing up for the borrowed money.

Q. It was something like a day or two after that time? A. Yes, sir

(Testimony of B. F. Chattin.)

Q. At that time, what did you say to Mr. Cobban with reference to selling the land to him?

A. Why, he made me an offer of a hundred dollars above all expenses.

Q. And you accepted the offer, did you?

A. I accepted the offer.

Q. Then the deed was drawn up and you signed it conveying the land to him? A. Yes, sir.

Q. But no conversation of this kind had been had between you before the time of your final proof?

A. No, sir.

Q. Had you really contemplated making a sale of the land to Cobban before that time? A. No, sir.

Q. Did you ever made any effort to sell it to anybody else? A. I do not know as I did.

Q. Are you one of the people against whom indictments were found by the United States Grand Jury?

A. Yes, sir.

Q. Mr. Walsh is one of your attorneys I believe in that matter? A. Yes, sir.

Q. And in consulting with him you consult with him as your lawyer? A. That is it.

B. FRANK CHATTIN,

Subscribed and sworn to before this 7th day of March, 1902.

HENRY N. BLAKE,
Examiner.

WILLIAM J. EDDY, being first duly sworn as a witness on behalf of the complainant, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. What is your full name?

A. William J. Eddy.

Q. How old are you?

A. I will be thirty-four in June.

Q. You live at or near Victor?

A. Yes, sir, about ten miles southwest of Victor.

Q. Did you marry a Jamieson?

A. No, sir.

Q. What was your wife's name?

A. She was a Roll.

Q. What was her first name? A. Retta.

Q. Your wife is a niece of Mr. and Mrs. Jamieson?

A. My wife's mother was a Jamieson.

Q. How long have you lived at your present place?

A. Eight or nine years; that is about right, I guess.

Q. What is your business?

A. Farming principally.

Q. How much of a place have you?

A. One hundred and sixty acres.

Q. Under what claim did you take it up?

A. Homestead.

Q. Have you title to it? A. No, sir.

Q. Haven't? A. Not yet.

Q. How long before you can get title to the land?

A. Couple of years, I believe.

(Testimony of William J. Eddy.)

Q. Have you any other real estate? A. No, sir.

Q. And no personal property of any kind except that which you use on the ranch? A. No.

Q. How many children have you? A. Two.

Q. Did you take up a claim under the stone and Timber Act? A. I did.

Q. Did your wife? A. Yes, sir.

Q. What is her first name? A. Retta.

Q. Has she been subpoenaed?

A. No, sir, I believe not.

Q. Was she indicted for perjury? A. No, sir.

Q. Were you? A. Yes, sir.

Q. Did she take up a claim at the same time that you did? A. No, sir.

Q. Before or after? A. After.

Q. So your dealings and hers were distinct and separate? A. Yes, sir.

Q. Did you sell to Cobban? A. Yes, sir.

Q. Did she? A. I think so.

Q. At the same time? A. No, sir.

Q. Now, then, Mr. Eddy, I want you to be kind enough to give—to state in your own way just all the facts and circumstances connected with your taking up your own claim—how you came to do it, et cetera?

A. Well, I heard about it the first time down at my father in law's; I went home and went to talking about it, talked it over with my brother, and concluded we would go and take up a claim if we could; wanted me to go out first and see what the show was see if there was

(Testimony of William J. Eddy.)

anything in it. So I went out on horseback went over to my mother in law's mother's place—father's place; that is on the Nine Mile prairie, I believe; I forgot what they call it.

Q. What is their name?

A. Jamieson. At the same time Tom Roll told me that Albert Jamieson was locating people out there; that he had been on the survey and would locate me if I went out there. I went out and asked him what he would take to locate me on a piece of timber land, and he said ten dollars—I engaged him. So the next day, I believe, I went up in the mountains—in the meantime George Jamieson and Joshua Gilman and his wife and George Jamieson's wife had come and Mr. Yarger had come too. We all went up in the mountains to locate our places; Albert Jamieson was the leader, of course, he had been on the survey and knew the lines. We started out and tramped all day and took up three or four; I don't know just how many that day—four or five, I guess.

Q. Just state as fast as you can please because we want to get along as fast as we can?

A. He said Mr. Griswold would come over and estimate it.

By Mr. BICKFORD.—We object to anything that was said by Albert Jamieson.

Q. Albert said that? A. Yes, sir.

Q. That Mr. Griswold would come over and estimate it?

(Testimony of William J. Eddy.)

A. Yes, sir; I had never seen Mr. Griswold before in my life; said he would come over and estimate it. I believe we went all over it again; anyway Jamieson gave me my numbers and I went down to Missoula and filed on it. Mr. Jamieson I believe had taken up a claim before that and I believe—

Mr. BICKFORD.—We object to what Jamieson said or the statement of witness concerning anything that Jamieson had done as irrelevant and immaterial.

A. Said if I wanted to borrow money to prove up on it or anything I could get it from Mr. Cobban.

Q. Albert said that?

A. I don't know whether it was Albert or Mr. Jamieson, but anyway Mr. Jamieson had done that way, so I went to see Mr. Cobban about it; he said that he could accommodate me, lend me the money provided I would need it. I did not know whether I would need it or not; of course, I wanted to make a sure thing of it while I had gone that far.

Q. Well, go on.

A. After the sixty days I came down and proved up on it; that is all there is to it.

Q. Then you sold to Mr. Cobban?

A. Borrowed the money and sold to Mr. Cobban.

Q. How much did you get from him?

A. I got a hundred and twenty dollars from him; it was Mr. Catlin, though, instead of Cobban. Mr. Cobban was not there the last day I went down to prove up; it was Mr. Catlin.

(Testimony of William J. Eddy.)

Q. Mr. Catlin did the business?

A. Well, no; a man there done the writing, I believe, read out the paper.

Q. How much money did Mr. Catlin give you, did you say? A. A hundred and ten dollars.

Q. Your wife was not along at that time?

A. No, sir.

Q. But your wife deeded before this?

A. No, afterwards.

Q. Who did you say paid this money into the land office? A. Mr. Catlin, I believe.

Q. Was that the only money that you had handled or received from Cobban or Catlin from the beginning to the end—was the one hundred and ten dollars?

Mr. BICKFORD.—Objected to as leading.

A. Yes, sir, a hundred and twenty, I believe, it was instead of a hundred and ten.

Q. You stated a hundred and ten a few minutes ago; which was it—a hundred and twenty or a hundred and ten? A. It was a hundred and twenty.

Q. That is all you received? A. Yes, sir.

Q. All that you handled from the beginning to the end?

Mr. BICKFORD.—Objected to as leading.

A. I handled my own money.

Q. I mean so far as this deal is concerned.

A. Yes, sir.

Q. Who do you say it was that told you about this, Mr. Eddy? A. My wife's parents—Roll.

(Testimony of William J. Eddy.)

Q. And were they Mr. and Mrs. Thomas Roll?

A. Mr. Thomas Roll.

Q. That was her mother that testified?

A. Yes, sir.

Q. They told you about this?

A. Yes, sir; the first I heard of it.

Q. You left your home in Victor to go up into the mountains for the purpose of getting this claim?

A. Yes, sir.

Q. Who did you say you went with?

A. I went alone on horseback.

Q. All the way up on horseback?

A. All the way up on horseback.

Q. You had not seen Mr. Cobban or Mr. Catlin or anybody in regard to the matter at that time?

A. Never heard of them.

Q. You acted solely from what your father in law and mother in law told you?

A. Yes, sir, I believe they got a letter from above stating they could take up land under that entry.

Q. This same letter that was received in the neighborhood?

A. Yes, sir, you have heard of that, I guess, before now.

Q. And where did you first see Albert Jamieson?

A. When I got up there to his place where he is living.

Q. And you say that he made the location for you?

Mr. BICKFORD.—We object to that as leading.

(Testimony of William J. Eddy.)

A. Yes, sir.

Q. Had you ever been up there before?

A. I had been up in that country before.

Q. I mean to this claim before? A. No.

Q. Never have been there since?

A. No, not on that claim.

Q. And how long did you say you were on it?

A. Might have been three or four hours; was on it twice.

Q. Was Mr. Griswold with you?

A. He was the last time.

Q. So you saw both Mr. Griswold and Albert?

A. Yes, sir.

Q. They were both there to help you make the location?

Mr. BICKFORD.—We object to that as leading.

A. He came down one day to estimate, I believe; so I understood.

Q. To estimate the value of the pine?

A. I believe so.

Q. Did he make an estimate, do you know?

A. I don't know whether he did or not; if he did that was his business, I suppose.

Q. Who was he working for?

A. I don't know; I don't know anything about it; I supposed he was working for the Government; I thought it was a sort of a form we had to go through. I thought at the time he was working for the Government; I never

(Testimony of William J. Eddy.)

asked him any questions; it was none of my business anyway.

Q. And your knowledge of this description, then, was gained from these two visits of these men?

Mr. BICKFORD.—We object to that as leading.

A. Yes, sir.

Q. And you say Albert gave you the description and sent you down to Missoula?

Mr. BICKFORD.—We object to that as leading, and as repetition of the former examination of the witness.

A. He did not send me to Missoula, I went without sending.

Q. Did he give you the description?

A. Yes, sir.

Q. How many more did you say were up there at this time?

A. There was Jamieson and his wife; Joshua Gilman and his wife, and myself, was in that party.

Q. Are the Gilmans any relation to you?

A. Mrs. Gilman and Mrs. Roll are sisters.

Q. You were all camped out there?

A. No, we were staying at Mr. Jamieson's.

Q. You went up alone, did you come back alone?

A. Yes, came back alone.

Q. Did you leave the party up there?

Mr. BICKFORD.—We object to that as irrelevant and immaterial.

A. Came before they did.

(Testimony of William J. Eddy.)

Q. Did they come to Missoula the same day you did?

A. No. I left Missoula before they got there.

Q. So you had nothing to do with them in Missoula?

A. No.

Q. What did you do with this description that Albert gave you?

Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. Well, I went to see Mr. Cobban about loaning the money, and showed him the description. I told him I wanted to go and file on it; he went over with me.

Q. The description that Albert gave you you gave to Mr. Cobban? A. I believe so.

Q. And then he went with you?

A. I don't know whether he handed it in or not, or gave it back to me.

Q. And then he went with you to the land office?

A. Yes.

Q. And you filed it? A. Yes, sir.

Q. Do you know who did the writing on your statements? A. What statements?

Q. On the statements that you made; do you know who wrote that out?

A. I forget; I don't know as I could tell.

Q. Did Mr. Cobban write it out?

Mr. BICKFORD.—We object to that as leading.

A. I have forgotten all about it.

Q. Well, he was there with you in the land office; you

(Testimony of William J. Eddy.)

are unable to state as to whether he wrote this out or not?

Mr. BICKFORD.—We object to that as leading.

A. Don't know what it is.

Q. This first statement that you signed, at the time you filed. That is your signature, isn't it?

A. Yes. Oh, I expect he did.

Q. You saw him write out a paper there, didn't you?

A. Yes.

Q. That you signed?

A. I could not say for sure; don't recollect that now.

Q. Well, then, the paper that you signed and that he wrote out, where did you go, did you go home then after you filed? A. Yes, sir, started right home.

Q. You did not get any money from him then, did you?

A. No, sir, I did not know as I would need any. I just saw what I could do if I should need it.

Q. And did you stay at home during the sixty days that elapsed?

A. Yes, sir, I was haying in good shape.

Q. Did you have anything to do in connection with your filing so far as getting the land advertised?

A. Yes, sir, I got it advertised.

Q. Did you do the advertising?

A. I went to the office to get it advertised.

Q. What office did you go to?

A. To the "Missoulian," I believe; the only office there that I know of.

(Testimony of William J. Eddy.)

Q. Did you go yourself to the "Missoulian"?

A. Yes, sir.

Q. When? A. That same day.

Q. That you filed? A. Yes.

Q. Who did you go with?

A. I went up there—someway or another, they wanted pay in advance; I forget what it was—anyway, I would not do it; they did not want to put it in so I went and I think I got Mr. Cobban to go there and fix it up with them; they wanted it in advance and I did not want to pay them in advance until I got it in the paper.

Q. Now, give us the facts of the case.

A. That is all I can remember.

Q. You got Mr. Cobban to go? A. Yes.

Q. You did not expect that Mr. Cobban or anybody from his office would go to the "Missoulian" printing office until you had this trouble about paying in advance? A. No.

Q. You expected to do all that yourself?

By Mr. BICKFORD.—We object to that as leading.

A. Yes.

Q. What paper did you have with you when you went to the "Missoulian"?

A. Oh, I think it was a little—I cannot remember what it was. I suppose it was what I wanted advertised, the numbers of the claim and my witnesses.

Q. Are you able to state that when you went to the "Missoulian" printing office you had such a paper?

A. I had to have it.

(Testimony of William J. Eddy.)

Q. Did you have it? A. I think I did, yes.

Q. Who did you receive it from?

By Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. Don't know now whether it was the land office; I can't remember about that.

Q. You can't remember who you received the paper from? A. No, I can't.

Q. Can you remember at all what the paper was, absolutely and clearly?

A. Well, it was a description of my claim or I would not want it to advertise it.

Q. I am not asking you as to what you supposed; I am asking you as to the fact of the paper you took to the "Missoulian."

By Mr. BICKFORD.—We object to counsel cross-examining his own witness.

(No answer.)

Q. Now, you state that you have no knowledge as to who you received this paper from; I ask you if you have any knowledge as to what the paper was?

A. Well, it was a description of the land; of course it had to be.

Q. Other than the fact then that you say it had to be, have you any knowledge in fact as to what it was?

A. Well, I could not give a description of the land without the paper.

Q. Did you know who your witnesses were?

A. I have forgotten now.

(Testimony of William J. Eddy.)

Q. Did you ever know? A. Yes, you bet I did.

Q. How did you know?

A. Because I had them written down.

Q. Who wrote them down?

By Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. Wrote them down myself one time.

Q. Where were you when you wrote them down yourself? A. Was up the Blackfoot.

Q. At the time you made the location?

A. After I had made it, yes.

Q. Who gave them to you?

A. I said I wrote them down myself.

Q. Who gave you the names of the witnesses?

A. Albert Jamieson.

Q. He gave you the names of the witnesses and you wrote them down?

A. He gave me a description of the land, the numbers were on the paper.

Q. Well, if he gave you a paper with the description and the names of the witnesses were on the paper how did you come to write it?

By Mr. BICKFORD.—We object to all this as leading.

A. I told him as I wanted it, wanted it wrote down, I didn't know what witnesses I could get in, it seemed to me as if we had to put down four witnesses and draw two from them.

Q. Was it this paper that Albert gave you with the

(Testimony of William J. Eddy.)

description of the names of the witnesses that you took to Missoula?

By Mr. BICKFORD.—We object to that as leading.

A. Yes, sir.

Q. And that was the paper that you took to Missoula?

A. Might have been; I am not sure about it.

Q. What did Mr. Cobban do there when you went and got him?

By Mr. BICKFORD.—We object to that as irrelevant and immaterial.

A. We fixed it up so they advertised it all right.

Q. You didn't pay any money for it?

A. Not then, no.

Q. Then during the sixty days that you were working good and plenty in the hay-field as you state at the lapse of that sixty days you came back to Missoula?

A. Yes, sir.

Q. Who did you come with? A. Came alone.

Q. Do you remember who your witnesses were that appeared on that day?

A. Don't remember exactly; it was two of them, four.

Q. That Albert wrote down?

By Mr. BICKFORD.—Objected to as leading.

Q. Which two, you don't know?

A. No, I would not be positive; I have forgotten.

Q. You say that Mr. Cobban was out of town this day? A. I believe so.

Q. You didn't see him? A. No.

(Testimony of William J. Eddy.)

Q. Well, did you go to his office before you made your final proof?

By Mr. BICKFORD.—Objected to as leading.

A. Yes.

Q. Saw Mr. Catlin?

By Mr. BICKFORD.—Objected to as leading.

A. Yes, sir.

Q. And did Catlin go with you to the land office?

A. No, sir; I wanted to borrow the money from him; he went to get it and told us to go on over and he would be over there.

Q. Who was "us"? A. Our outfit.

Q. Your outfit was there on the day to prove up?

A. Yes, sir.

Q. How many were in the outfit?

A. Mr. Gilman and his wife, and George Jamieson and his wife.

Q. So there were five of you in the outfit?

A. Yes, sir.

Q. They were in Cobban's office at the same time with you?

A. Yes, I believe they were.

Q. Catlin told you to go on over to the land office and he would come over?

A. That is the way I understood it. I know he was not there when we went over.

Q. He had come there?

A. Not until after we left.

Q. After you had made your filing?

(Testimony of William J. Eddy.)

A. Yes, sir.

Q. Now, if there was any money paid in to pay for your land, he must have paid it then?

By Mr. BICKFORD.—We object to that as leading.

Q. You have no knowledge as to who paid it then?

By Mr. BICKFORD.—We object to that as leading.

A. We saw him as we came out. He said he would fix it up all right, to go up to his office.

Q. Did you go? A. Yes.

Q. How many? A. All of us.

Q. Did you on that same day convey to Mr. Cobban?

By Mr. BICKFORD.—Objected to as leading.

A. I believe so.

Q. Then it was that you received your hundred and ten or a hundred and twenty dollars for your land?

By Mr. BICKFORD.—We object to that as leading.

A. Yes.

Q. That was paid you by who? A. Mr. Catlin.

Mr. MAYNARD.—There seems to be in the deeds which have been offered in evidence some mistake in the description which I will propose to explain or correct before the Examiner has closed, if possible, but as such deeds as I have now before me have been offered in evidence, I will read them into the record. If I can't explain it, why, it will have to go.

Mr. BICKFORD.—Counsel for the defendant objects to the reading into the record in the manner mentioned by counsel for the reason that such reading is irrele-

(Testimony of William J. Eddy.)

vant, immaterial and not responsive to any issue of the case; does not prove or tend to prove any issue in the case; for the further reason that the instrument is already in evidence.

Mr. MAYNARD.—The description contained in the statement of Mr. Eddy's claim has been read before, I desire to place it in again. "The south half of the southeast quarter, and the south half of the southwest quarter of section eight, township fourteen north of range fifteen west."

And the deeds from William Eddy and Matilda Eddy both dated on the 30th of October, 1899, to R. M. Cobban in their description are as follows:

"The southeast quarter of the northeast quarter, the north half of the southeast quarter, and the southeast quarter of the southeast quarter of section fourteen, township fourteen north of range fifteen west."

The description contained in the deed of the wife from William Eddy and Matilda Eddy is: "The southeast quarter of the northeast quarter, the north half of the southeast quarter, and the southeast quarter of section fourteen, township fourteen north of range fifteen west."

Now, then, from these descriptions, it appears that the receiver and the register of Anaconda, Deer Lodge County, in furnishing the certified copies of these deeds by a clerical mistake of his own has given me the same description instead of giving me two separate descriptions, and I will undertake to get from the clerk and

(Testimony of William J. Eddy.)

the register of Deer Lodge County a correction of this deed, and get it substituted, which would give a correct description of the William J. Eddy claim.

By Mr. BICKFORD.—Counsel for defendant stated that there is nothing before the Court indicating that any mistake has ever been made in the certified copies of deeds, and that the assumption on the part of counsel for the plaintiff that a mistake has been made is purely an assumption and nothing else; counsel for the defendant objects to the offering and introduction in evidence of the deeds or purported deeds and certified copies of deeds for the reason that there appears so far as the testimony now before the Court is concerned that no mistake has ever been made; next, because the deeds as read do not refer to any of the land mentioned and described in the bill of complaint filed in this action, nor to the part or portion of land which is mentioned in said bill of complaint as having been deeded by William J. Eddy to Robert M. Cobban, and therefore are irrelevant and immaterial and not responsive to any issue raised in the case.

Cross-examination.

(By Mr. BICKFORD.)

Q. How old are you, Mr. Eddy, did you say?

A. I will be thirty-four next June.

Q. You are a citizen of the United States?

A. Yes, sir.

(Testimony of William J. Eddy.)

Q. Have you ever made a timber and stone entry before this one? A. No, sir.

Q. At the time when you went to the Blackfoot country to select a timber and stone tract of land, had you ever been there before?

A. Yes, sir, I was up in that country before.

Q. Knew that it was a timber country?

A. Yes, sir.

Q. In looking over this tract of land as you have testified, what did you conclude with reference to its being more valuable for timber than for agricultural purposes? A. Knew it was the way it was situated.

Q. More valuable for what purpose?

A. For timber.

Q. Did it have any value for agricultural land?

A. Not in my opinion.

Q. Could it be irrigated?

A. No, sir; no ditch could be built on it.

Q. All this land west of the mountains has to be irrigated in order to raise crops?

A. All I have seen over there has.

Q. Now, then, after looking over the land, you went to the land office and made your declaratory statement?

A. Yes, sir.

Q. And expressed your wish to select this land and to enter it under the Timber and Stone Act?

A. Yes, sir.

Q. Now, you advertised in the newspaper, as I understand it, for sixty days? A. Yes, sir.

(Testimony of William J. Eddy.)

Q. Giving a date when you would make your final proof? A. Yes, sir.

Q. Did you appear at the time mentioned in the newspaper, to make your final proof? A. I did.

Q. Did you have your witnesses there?

A. Yes, sir.

Q. Did you give your testimony at that time?

A. Yes, sir.

Q. Was it reduced to writing? A. Yes, sir.

Q. And you signed it, didn't you? A. I did.

Q. And swore to it? A. Yes, sir.

Q. The statement which you made at the time you first went to the land office to make your sworn statement contains this sort of a clause: "That I have made no other application under said act; that I do not apply to purchase the land above described on speculation but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly or indirectly made any agreement or contract in any way or manner with any person or persons whomsoever by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself"—was that correct?

A. Yes, sir, that was correct.

Q. That statement was true at that time?

A. That was true, yes, sir.

Q. Now, at the time when you made your final proof, sixty days about after the time when you had filed that statement, you stated in answer to a question pro-

(Testimony of William J. Eddy.)

pounded to you—the question is as follows: "Have you sold or transferred your claim to this land since making your sworn statement or have you directly or indirectly made any agreement or contract in any way or manner with any person whomsoever by which the title which you may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except yourself"—you answered that "No, sir"—was that correct? A. That was correct.

Q. That was true at that time? A. Yes, sir.

Q. Then, between the time when you made your declaratory statement in the first instance you had seen nobody or talked to nobody about selling the land?

A. Nobody.

Q. Question fourteen says: "Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person"—your answer is "Yes, sir"—that answer is true? A. That answer is true.

Q. You intended, then, to take the land for your own benefit? A. I certainly did.

Q. Question No. 15 is as follows: "Has any other person than yourself or has any firm, corporation or association any interest in the entry you are now making or in the land or in the timber thereon"—your answer was "No, sir"—was that true? A. Yes, sir.

Q. No person, except yourself, then, had any interest in the timber contained on this land when you made your final proof? A. They had no interest.

(Testimony of William J. Eddy.)

Q. You had gone to Mr. Cobban's office, as I understand your testimony, to make arrangements with him about borrowing money with which to make your final proof on this land? A. Yes, sir, if I needed it.

Q. At that time you did not know whether you would need the money or not? A. No, sir, I did not.

Q. You were possessed of other sources from which to obtain money at that time if you had wanted to do so?

A. I had enough cattle to get money on.

Q. Then you are possessed of some personal property, horses and cattle and that sort of thing, are you?

A. Yes, sir.

Q. What do you regard your property as worth?

A. From eight hundred to a thousand dollars, I should say.

Q. You had this property at the time when you made your entry, the time when you made your final proof?

A. Yes, sir.

Q. At the time when you borrowed this money from Mr. Cobban, did you say anything to him about selling the land to him?

A. Not a word; I knew I could not do it.

Q. Knew you could not make any contract for the sale of land before you had title to it?

A. Yes, sir, I knew that.

Q. I will ask you to state whether or no you had satisfied yourself as to the value of this land for timber purposes at the time when you made your first statement in the land office concerning it? That you said it

(Testimony of William J. Eddy.)

was valuable for timber purposes?

A. Yes, sir.

Q. What value about did you place upon the land?

A. I think one thousand dollars, if I am not mistaken.

Q. You say it is worth about nine hundred dollars in your final proof? A. I have forgotten.

Q. You did not know what valuation you had placed upon the land so far as the timber was concerned?

A. No, I had forgotten.

Q. Did you look at the land with the idea of estimating the value of it for timber purposes when you went over it in the first place, did you look at it with the idea of finding out about how much it would be worth for the timber on it?

A. I tried to, but I don't know much about it.

Q. Never have as I understand made any estimate of timber on land before that time?

A. No, only just roughly. I have been in the woods a good deal but I could not estimate timber; didn't have enough experience.

Q. Did you ever estimate the quantity of timber upon the land in feet? A. Oh, no.

Q. Now, up in the Bitterroot valley, where you live, is it timber land or mostly agricultural?

A. It is both.

Q. Have you ever worked in the woods?

A. Yes.

(Testimony of William J. Eddy.)

Q. Did you ever work in the business of estimating timber? A. No, sir.

Q. You said you were there at the land office with Phil Jamieson, his wife, and Mr. Gilman and his wife, was there any agreement by which you were to go there at the time time with them?

A. They were all witnesses.

Q. They were witnesses for each other and for you?

A. Yes, sir.

Q. Why did you go at the same time? Was it for the purpose of lessening the expense and saving trips there at the land office?

A. I went alone, I supposed we all had to be there then.

Q. Then the Jamiesons, Jamieson and his wife, and Pelkey and his wife, came to make final proof at the same time?

A. I think they did, except Pelkey, Gilman was with them.

Q. Was there any agreement to go there at that time?

A. I think we would all have to be there, witnesses for each other.

Q. Who were you a witness for?

A. I cannot tell.

Q. You were a witness for some of the other people there at the same time?

A. Two or three of them, I get them mixed, there were so many of them I can't remember.

(Testimony of William J. Eddy.)

Q. You are prepared to say you did not make any contract to convey this land prior to making your final proof? A. Yes, sir.

Q. You made no contract or agreement with anybody to sell the land after you had made your final proof?

A. No, sir, I knew better than that, could not do it. A person cannot sell anything until he owns it.

Q. What paper, if anything, was given to you by the officers of the land office at the time when you made your final proof? A. Officers of the land office?

Q. What was given you at the times when you made your final proofs if anything?

A. I don't know now.

Q. Did you get a final receipt for your money?

A. Yes, sir.

Q. Look at that paper and see if it is the final receipt or one like it.

A. I don't suppose I can tell now; I don't remember now.

Q. You don't remember about that?

A. No, never had much experience with papers that way.

WILLIAM J. EDDY,

Subscribed and sworn to before me this 7th day of March, 1902.

HENRY N. BLAKE,
Examiner.

In the Circuit Court of the United States, District of Montana.

THE UNITED STATES,
vs.
WILLIAM A. CLARK.

Certificate of Master in Chancery.

To the Judges of the Above-entitled Court:

I do hereby certify that, under the order of the said court made and entered in the said cause upon the first day of October, 1901, and in pursuance of the stipulations and agreements of the above-named parties, I continued to take the testimony therein in my office in the city of Helena, in said district; that Charles H. Cooper and Charles W. Blair, heretofore appointed stenographers, took the testimony of the witnesses in shorthand and transcribed the same; that the following named persons were called as witnesses and appeared personally before me and were duly sworn to testify to the truth, the whole truth and nothing but the truth: Mrs. Lizzie T. Catlin, Levi B. Cyr, Mrs. Emma Dildine, Matthew P. Dunham, Robert Fisher, George P. Jemison, Mrs. Effie M. Kilburn, William E. Lepley, Thomas H. McConnell, Oscar Muckenhim, Nels O. Opsata, M. C. Stairs, Mrs. Martha E. West, Calvin Yarger.

That said witnesses were examined and cross-examined by counsel for the parties and their testimony is

contained in this volume IV, pages 1721 to 2288 inclusive; that said witnesses with the exception of Robert Fisher, respectively, carefully, read, corrected, subscribed and verified their testimony before me at the times hereinafter mentioned; and that under the stipulation of the parties I certified that the testimony of Robert Fisher had been correctly transcribed.

One exhibit of the complainant, No. 199, is herewith filed.

Dated this 20th day of March, 1902.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

M. R. STAIRS, a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Where do you live, Mr. Stairs?

A. Missoula.

Q. How long have you lived in Missoula?

A. About two years and a half or a little better.

Q. Where did you live before moving to Missoula?

A. I lived on the Blackfoot in Missoula County.

Q. Near Clearwater?

A. Well, it is about nine miles from Bonner, between Bonner and Clearwater.

Q. What were you doing up nine miles from Bonner?

A. I was selling booze.

Q. You had a saloon there?

(Testimony of M. R. Stairs.)

A. Yes, sir, stopping place.

Q. What was the name of the place?

A. Twin Creeks.

Q. How long were you in business there?

A. About twelve years.

Q. Were you in business there in the spring and summer and fall of 1899 three years ago? A. Yes, sir.

Q. Did you know Mr. Griswold? A. Yes, sir.

Q. Did you know Albert Jamieson?

A. Yes, sir.

Q. Did you see them during that season of 1899?

A. I did.

Q. Did you know the business they were engaged in the greater part of that time? A. Yes, sir.

Q. What was it? A. Locating timber.

Q. Who for?

A. Well, they told me it was for Mr. Cobban.

By Mr. BICKFORD.—We object to that and move to strike it out on the ground that it is hearsay.

Q. Whereabouts were you so told?

By Mr. BICKFORD.—Object to that and move to strike it out on the ground that it is hearsay.

A. Well, I was told on the Blackfoot at my place.

Q. Who told you first?

By Mr. BICKFORD.—We object to that on the ground that it is hearsay.

A. Mr. Griswold.

Q. When was that? A. 1899.

(Testimony of M. R. Stairs.)

Q. What time in the year?

A. Well, now, I couldn't tell the exact date, it was in the summer; I wasn't there all the time, I had two places running; I was running in Missoula and on the Blackfoot both.

Q. Did you see the contract that was made between Mr. Cobban and Mr. Griswold?

A. He showed me the contract.

Q. Did you read it?

A No, I don't know as I did.

Q. Did he read it to you?

A. He read part of it.

Q. From the part that he read and the conversations that you had with him, did you find out what the scheme was?

By Mr. BICKFORD.—We object to this because the contract itself is the best evidence and no proper foundation has been laid for the introduction of oral testimony concerning the contents of the contract, and because it is irrelevant and immaterial and not binding upon the defendant in this case, and does not purport to be a contract between the defendant herein and any person.

A. As near as I can tell Mr. Griswold was working under instructions of Mr. Cobban locating this timber, had a written contract.

Q. Go on and state it now just as near as you can.

A. And that he was locating on percentage, so much a thousand, and any further than that I do not recollect; I wasn't very deeply interested at the time.

(Testimony of M. R. Stairs.)

Q. Do you know of the fact of his locating men and women during this season?

By Mr. BICKFORD.—We object to that as leading.

A. Yes, sir.

Q. Did you ever converse with various entrymen or entrywomen that were located by him as to the terms of their deal with him?

A. Well, not with many, I don't deal much in women, but some of the men.

Q. Name some of the men.

By Mr. BICKFORD.—We object to that as being hearsay, irrelevant and immaterial.

A. Jack Murtaugh was one.

Q. Give us the others. A. Mr. Reeves.

Q. What was his first name?

A. We used to call him Hay Wire.

Q. Who were the others?

A. Starkey—I do not know the initials; I think his name was Robert.

Q. Reeves and Starkey and Jack Murtaugh, and who are the others?

A. I guess that is about all I can remember.

Q. As to whether or not any Dodds?

By Mr. BICKFORD.—Objected to as leading.

A. Yes, I know some of them.

Q. Name as many of the Dodds as you can recall.

A. Well, there is Nip Dodd, and Ed. Dodd and Chub, that is Harrison Dodd.

Q. Who is alias for Chub Dodd, Allen?

(Testimony of M. R. Stairs.)

By Mr. BICKFORD.—We object to that as leading.

A. Yes, Allen, Allen is his right name.

Q. Where were all these people, the Murtaughs and the Dodds, were they at your place?

By Mr. BICKFORD.—We object to that as leading.

(No answer.)

Q. When you had these conversations with them?

A. Some of them in Missoula and some on the Blackfoot.

Q. Name those you had conversations with on the Blackfoot?

A. Jack Murtaugh was one, and three of the Dodd boys.

Q. What were they doing there?

A. Well, they lived a little west from me, had places about a mile and a half or two miles and used to be up there occasionally to get a little booze, and catch some fish, and used to have a good deal of conversation with them.

Q. What did they tell you in regard to how they came to make their locations under the Stone and Timber Act?

By Mr. BICKFORD.—We object to that as irrelevant and immaterial, as hearsay and not asking for even a declaration of any particular one. No foundation has been laid for the impeachment of any of the witnesses.

A. Well, they said they were going to make about a hundred dollars apiece and expenses.

Q. How were they going to make that?

(Testimony of M. R. Stairs.)

A. By locating timber, taking up a timber claim.

Q. For whom?

By Mr. BICKFORD.—We object to this as leading.

By Mr. WALSH.—You are asked to tell what they said, not what you think about it but what they told you.

A. They told me they were going to take it up through Griswold and Mr. Cobban, a timber claim.

Q. To take it up through Griswold for Mr. Cobban?

A. Yes.

By Mr. WALSH.—We move to strike this out because the witness did not say so.

Q. Did you say yes, or did you say no?

By the EXAMINER.—Read the question again to the witness.

By Mr. MAYNARD.—He understands it perfectly well, he said yes.

By the WITNESS.—I don't know whether I answered that or not.

By the EXAMINER.—You can answer now then.

By Mr. BICKFORD.—We object to it as being leading, irrelevant and immaterial, also that it is hearsay.

A. I answered yes.

By Mr. WALSH.—I move to strike out the question addressed to him by the counsel "Through Mr. Griswold for Mr. Cobban" for the reason that it is leading.

Q. And where did you have the conversation with the Dodds that you have referred to?

(Testimony of M. R. Stairs.)

A. On the Blackfoot.

Q. How many of them were present at the time?

A. Well, I couldn't exactly say whether they were all there at the time or not, but I talked with the whole three of them, it may have been different times.

Q. State as to whether or not they were there frequently at your place?

By Mr. BICKFORD.—We object to that as leading.

(No answer.)

Q. Were they at your place frequently or not?

A. Yes, sir; they were.

Q. What was the substance of the conversation that you had with them?

By Mr. BICKFORD.—We object to that as being hearsay, irrelevant and immaterial, not calling for any particular conversations with any particular witness.

A. We had different conversations, it wasn't all about timber or locating timber.

Q. I call your attention particularly as near as you can, to the conversation that you had with these people, and if separate, name the separate conversations that you had.

A. Why the way it came up I was talking to them dunning them for whisky bills and they told me how they were going to get the money to pay.

By Mr. BICKFORD.—We move to strike out the answer of the witness on the ground that it is not respon-

(Testimony of M. R. Stairs.)

sive to the question and because it is irrelevant and immaterial and is hearsay.

Q. I understood you to say you were dunning them for whisky what did they say?

A. They said they would have the money after a while.

Q. When were they to get their money?

By Mr. BICKFORD.—We object to this as leading.

A. They said after they took the timber up, located their timber and proved up on it.

A. After they had proved up on their timber claim they would have some money?

By Mr. BICKFORD.—We object to that as leading.

A. Yes, sir.

Q. How much did they say—these Dodds, when they were at your place—they were to get each?

By Mr. BICKFORD.—We object to that as hearsay and irrelevant and immaterial and as calling for the declaration of some other party.

A. They just simply put it down on paper. They claimed they would clear about a hundred dollars on it.

Q. You may state as to whether or not they did afterwards state that they had received this hundred dollars?

By Mr. BICKFORD.—We object to that as hearsay, and calling for the declaration of some other party, a declaration evidently made by them after they had parted with all interest.

(Testimony of M. R. Stairs.)

A. I received a little pay from Nip Dodd.

Q. But I asked you as to whether you had any information from them as to whether they had received this money or not?

By Mr. BICKFORD.—We object to that as hearsay and calling for the declaration of some other party.

A. Well, I don't know as I could answer that.

Q. Well, you were living there up in the Blackfoot country, did you know of many entries being made?

A. Yes, quite a few.

Q. You may state as to whether or not it was generally understood throughout that country as to what the people were to get?

By Mr. BICKFORD.—We object to that as immaterial, irrelevant and incompetent and as hearsay.

A. I did.

Q. What was the general understanding throughout the country?

By Mr. BICKFORD.—Objected to as irrelevant, immaterial, incompetent and as hearsay.

A. Well, it was supposed to be a hundred dollars and expenses, that is what they told me.

Q. What were the entrymen or the entrywomen, what were they to do, what did they have to do?

By Mr. BICKFORD.—Objected to as immaterial, irrelevant and incompetent, and as hearsay. It is also objected to for the reason that the rights of the parties

(Testimony of M. R. Stairs.)

cannot possibly be tried upon neighborhood gossip and current rumors.

Q. To get a hundred dollars what would they have to do?

By Mr. BICKFORD.—Objected to as irrelevant and immaterial and incompetent, and as hearsay; and for the reason that the rights of the parties cannot possibly be tried upon neighborhood gossip and current rumors.

A. Had to get somebody to locate them on the claim.

Q. Then what?

A. W ell, they were supposed to go on the claims themselves and look it over.

Q. Then what? A. Then file.

Q. Then what?

A. Receive their money after they proved up.

Q. After they proved up? A. Yes, sir.

By Mr. WALSH.—This all goes in under the same objection.

Q. And who were the locators?

A. Well, Mr. Griswold was one of them; Jamieson was one.

Q. Albert?

A. I think it is Albert—a fleshy fellow; I am pretty well acquainted with him, but I don't know his initials.

Q. Who else? Who is the other?

A. I don't know as I would know of any others.

(Testimony of M. R. Stairs.)

Q. Let me refresh your recollection, did you hear of a man by the name of Morris?

By Mr. BICKFORD.—Objected to as leading.

A. Davie Morris?

Q. Yes? A. I believe I did.

Q. He was another locator? A. Yes.

Q. Griswold, Morris and Jamieson were the locators?

A. Yes.

Q. Who were they working for?

By Mr. BICKFORD.—Object, unless the witness knows of his own knowledge.

A. All I know is what they told me.

By Mr. BICKFORD.—We object to the witness telling what they told him.

A. It was reported through the country there, they told me they were working under Mr. Cobban's instructions.

By Mr. BICKFORD.—We object to the witness telling what they told him, what was reported throughout the country.

Q. Buying for him?

By Mr. BICKFORD.—We object to the witness stating what they told him.

Q. Now, you may state as to whether or not any of these locators came to you and suggested that it would be a good thing for you to take up a claim?

By Mr. BICKFORD.—Objected to as being irrelevant and immaterial, and as leading and hearsay.

(Testimony of M. R. Stairs.)

A. Well, I could not say whether they did or not, that is possible; think it was Mr. Griswold, I think he spoke to me about taking up a claim, or two claims, my wife and I.

Q. Just what you were to do and what you were to receive, was that made known to you?

A. No, sir.

Q. Well, you refused to take up a claim in that way, didn't you?

By Mr. BICKFORD.—We object to that as leading.

A. I did, I told them I had money of my own to take up a claim and prove up on it.

Q. You may state as to whether you refused to take up a claim if you can.

By Mr. BICKFORD.—We object to that as not calling for any statement of fact from the witness, but as calling for a conclusion of the witness, and as being irrelevant and immaterial and not responsive to any issue in the case.

A. Well, there wasn't any money in it.

Q. Well, what do you mean by that?

A. Well, it was only a small amount.

Q. A hundred dollars, you mean? A. Yes—

Mr. BICKFORD.—Let the witness answer.

A. The hundred dollars was a small amount of money, and it looked to me as though I couldn't get out of it without swearing to a lie; if I followed it up before I proved up on it.

Q. So you did not go in? A. No, sir.

(Testimony of M. R. Stairs.)

Q. What did you do?

A. I located a claim for myself.

Q. And you paid for it with your own money?

By Mr. WALSH.—I do not see how this is of any consequence here at all—this neighborhood rumor, gossip and one thing and another, just simply swelling this record without any apparent purpose to it at all, and counsel himself knows absolutely that it has no business in here at all, and I am going to make this appeal to the discretion of the Master to cut it short, because if we have to go up on appeal with this I do not propose to pay for printing all this stuff, if I can avoid it.

By the EXAMINER.—I cannot make any ruling upon this matter.

Q. So you took up a claim yourself? A. Yes.

By Mr. BICKFORD.—Objected to as irrelevant and immaterial and incompetent, having no bearing in the trial of this case.

Q. And paid for it with your own money?

A. Yes, sir.

Q. You may state as to whether your wife took up a claim?

By Mr. WALSH.—We ask the Master to direct the counsel not to proceed any further with the inquiry as to whether this man's wife took up a claim or anything of that kind, as it is manifestly irrelevant.

By the EXAMINER.—I have no authority or control at the present time. It seems to me as far as I can

(Testimony of M. R. Stairs.)

judge it is something he has a right to go into, I am not passing upon what is taking place.

By Mr. WALSH.—Your Honor will remember that there is no allegation in the complaint that either Mr. Stairs or his wife made any entry or transferred any claim to Mr. Cobban.

By the EXAMINER.—I understand that, but I think I know why this testimony may be competent.

By Mr. MAYNARD.—That is the only reason they don't want it to go in.

Q. I will ask you if your wife took up a claim?

By Mr. BICKFORD.—We object to that as irrelevant and incompetent.

A. She did not.

Q. How much did you pay for your claim with your own money?

By Mr. BICKFORD.—We object to that as irrelevant and incompetent and immaterial.

A. Pretty close to five hundred dollars; I do not know exactly.

Q. You took up a hundred and sixty acres of land and paid the Government price? A. Yes, sir.

Q. And the expenses of running out there?

By Mr. BICKFORD.—We object to that as being leading.

A. Yes, sir.

Q. Now, then, did you have any conversation with Mr. Cobban at any time previous to your obtaining title to it so far as the final receipt would give it to you?

(Testimony of M. R. Stairs.)

A. No, sir.

Q. Then after you had gone to the land office and got the receiver's final receipt, did you then sell to Mr. Cobban?

By Mr. BICKFORD.—We object to that because it is leading, immaterial, irrelevant, and incompetent; no allegation in the bill of complaint that this man ever sold to Mr. Cobban.

A. I believe I did.

Q. Now, you may state how much you, having bought and paid for it, with your own money, received from Mr. Cobban?

By Mr. BICKFORD.—Objected to as irrelevant, immaterial and incompetent.

A. Eight hundred and fifty.

Q. Eight hundred and fifty dollars?

A. Yes, sir.

Q. Where did Mr. Cobban pay you eight hundred and fifty dollars?

A. I think I got a check on the First National Bank of Missoula.

Q. You may state as to whether or not you have any knowledge which leads you to believe that your description for which you received eight hundred and fifty dollars was any more valuable for the pine that was growing upon it than the descriptions of all these entrymen and entrywomen that you had heard had taken up under this Stone and Timber Act?

(Testimony of M. R. Stairs.)

By Mr. BICKFORD.—We object to that as immaterial, irrelevant and incompetent; we move further to strike out the statement of counsel to the witness evidently put up for the purpose of influencing his answer. We also object to this upon the ground that the witness has not shown himself competent to testify concerning the value of the timber upon his claim, or upon the other claims, nor has he shown himself familiar or acquainted with the claims taken up by these other parties, whatever they may be.

A. Well, I received a little more money.

By Mr. BICKFORD.—We object to that as immaterial, irrelevant.

Q. Can you answer the question, except on the point of your receiving the difference between the two scales of prices?

By Mr. BICKFORD.—We object to that as immaterial irrelevant and incompetent; and we move further to strike out the statement of counsel to the witness evidently put for the purpose of influencing his answer. We also object to this upon the ground that the witness has not shown himself competent to testify concerning the value of the timber upon his claim, or upon the other claims, nor has he shown himself familiar or acquainted with the claims taken up by these other parties whatever they may be.

A. Well, I don't know hardly how to answer that, I don't exactly savvey what you mean.

(Testimony of M. R. Stairs.)

Q. Do you know whether your description was any more valuable than the other descriptions so far as the pine that was growing upon it?

By Mr. BICKFORD.—We object to that upon the ground that it is irrelevant, immaterial and incompetent. We also object to this upon the ground that the witness has not shown himself competent to testify concerning the value of the timber upon his claim, or upon the other claims, nor has he shown himself familiar or acquainted with the claims taken up by these other parties, whatever they may be.

Q. Than that which was taken up by Jack Murtaugh, Haywire Reeves, Starkey, the Dodds?

A. You mean the value of the timber, or different claims?

Q. Yes, sir.

A. Well, there was some of them poorer than mine, some better.

By Mr. BICKFORD.—Now, we move to strike out the answer of the witness because he did not say what ones were poorer or what ones were better, nor any facts.

Q. Are you able to state was Jack Murtaugh's better or poorer than yours?

A. I do not know as I ever was there, as I have been over a whole lot of the timber there.

Q. Were any of the Dodds better than yours?

By Mr. BICKFORD.—We object to that because it is leading.

A. Well, I could not answer that question, could not

(Testimony of M. R. Stairs.)

say whether it was better or poorer; I know a few of them was poorer; I know a few that was better.

Q. Which are the ones that are better that you know of?

A. I don't know as they have been brought in here.

Q. Let us find out.

A. The Mickels claim, him and his wife and their claims, was not as good as mine.

Q. Which ones were better that you know of?

A. I don't know if all has been brought in; I have been over a whole lot of the claims that has been taken up.

Q. We will take our chances on that, if you will name some of them we will see.

A. Well, there is a good many of them better; I know that; because mine is a pretty poor claim.

Q. In regard to the question of experience or competency to judge, kindly state as to whether or not you had done locating for the Blackfoot Milling Company?

A. Yes, sir.

Q. How many years?

A. Well, I followed that business sixteen years.

Q. From that sixteen years' experience are you able to state whether or not you have any knowledge which would justify you in making calculation as to estimates of values upon growing pine—these descriptions?

A. Yes, sir.

(Testimony of M. R. Stairs.)

Cross-examination.

(By Mr. BICKFORD.)

Q. Did you ever do any work as an estimator, Mr. Stairs?

A. Well, I have estimated for myself and some for other parties.

Q. Did you ever know anybody to buy or sell a piece of land on your estimate?

A. Well, I don't know as I do; but I have been sent to locate pieces of timber in Minnesota.

Q. Have you ever done any estimating since you have been in Montana?

A. Well, only just rough estimations; that is, to see about how much we could cut off a section for the Blackfoot Milling Company.

Q. And you say that you never have made an estimate in Montana upon which a sale has been made, so far as you know?

A. No, sir; I have estimated for the company, that is all, to see about how much timber we could cut off of a section, a quarter section and the like of that, when I was working for the company.

Q. When were you working for the company?

A. It is about thirteen years ago I worked for the Blackfoot Milling Company.

Q. You have done no estimating since that time, then?

A. No, only for myself, looking over my timber claim.

Q. In your examination in chief you did not want

(Testimony of M. R. Stairs.)

the court to understand that you had any better or other right to take up timber land than anybody else, did you?

A. I don't know as I had any better right.

Q. You had the same right to take up land that anybody else had? A. Yes, sir.

Q. You did not arrogate to yourself any special privileges because you had four hundred and fifty or five hundred dollars with which to purchase the land?

A. I did not, only I thought I would make a better sale of it by taking it up myself and holding it a little while.

Q. Without borrowing the money?

A. Yes, using somebody else's money.

Q. And you are willing of course to do that if you had any way of doing so; in other words, you would be actuated by the same motives that anybody else would if they took up a piece of land, they would want to get as much for it as they could?

A. No, I was hard up, a little more than the others.

Q. A little more than the others?

A. I would not take any more chances than some of the rest of them.

Q. As I understand you there was no one ever suggested to you the idea of taking up a timber and stone entry except Mr. Griswold?

A. I think he is the only one.

Q. Do you know anything about Mr. Griswold's employment except what was told you by Mr. Griswold or somebody else?

(Testimony of M. R. Stairs.)

A. Only by his talk; I did not read that contract myself, he read that there.

Q. It was practically Mr. Griswold told you what the contract contained? A. Yes, sir.

Q. Your knowledge concerning these timber entries is gathered entirely from conversations which you heard from time to time on the Blackfoot River or in other places? A. Yes, sir.

Q. Did you ever go with any of these people to the land office as a witness? A. I believe I did.

Q. Whose witness were you?

A. I think for Mickels and his wife.

Q. Al. Mickels and his wife? A. Yes sir.

Q. At the time when you went to the land office you did not intend to perjure yourself when you testified for them? A. I did not.

Q. You answered truly such questions as were propounded to you concerning the matter under consideration at that time? A. Yes, sir.

Q. At whose request did you go as a witness for them?

A. Mr. Mickels'.

Q. Where does Mr. Mickels live?

A. At the time he lived somewheres up around Ovando.

Q. You were a witness as I understand it for both Mr. Mickels and for his wife? A. I think I was.

Q. Do you know anything about Albert Jamieson having been employed by Mr. Cobban other than what you gathered from hearsay? A. No, sir.

(Testimony of M. R. Stairs.)

Q. Do you know anything about who located the Mickels' on their land?

A. Well, I don't know whether there was anybody or not; I was over on his claim; he was over there himself.

Q. Do you know anything about where they got their money with which to make their final proof?

A. Well, I could not say positively; only what he told me.

Q. Do you know of any law, state or national, that would prevent anybody from borrowing money if they wanted to?

A. No; I don't say as there is.

Q. Never heard of anybody being prosecuted for signing a note for a hundred dollars, have you?

A. No, not without they forged it.

Q. With reference to the Mickels' interest, you know nothing about it except what you have told before, that is that they located a piece of land and made final proofs upon it? A. No, sir.

Q. Now, with reference to the relative value of the claims; upon what does the value of a claim depend?

A. According to how much timber is on it.

Q. Is that the only thing that lends it value?

A. What do you mean?

Q. Supposing that you were going out in the country to buy a piece of timber, would the quantity of timber alone determine its value? A. I think it would.

Q. Would you give as much for a piece of land containing five hundred thousand feet within ten miles of a

(Testimony of M. R. Stairs.)

navigable stream as you would for the same land within a half a mile? A. I don't think I would.

Q. Isn't there something, then, besides timber that adds to the value of a piece of timber land?

A. Yes.

Q. Would you give as much for a piece of timber land upon a steep mountain side as you would for one upon a hill with a moderate slope?

A. No, sir; slope too much on the mountain.

Q. Then there is something in the lay of the land that adds to or detracts from the value of a piece of land?

A. Yes, sir; according to the ground.

Q. Then the value of a piece of timber land depends upon the quantity of timber, its distance from navigable water, its location upon a steep mountain side or other kind of land, and its availability for other useful purposes? A. Yes, sir.

Q. Is there any other element which you can now think of which enters into the computation of the value of a piece of timber land?

A. Well, that is about all unless the land was good for agricultural purposes or something like that.

Q. Is there much land in the Blackfoot country that is valuable for agricultural purposes? A. No, sir.

Q. Is there any of the timber land that you know of that is valuable for agricultural purposes at the present time?

A. Well, no; I don't know as there is; that is, without

(Testimony of M. R. Stairs.)

it is timber land that has been homesteaded and taken up that way.

Q. You have to irrigate your agricultural land in that section of the country? A. Yes, sir.

Q. Is there any of the timber land with ditches upon it? A. Not much.

Q. I will ask you if it is not a fact that the value of the timber land depends upon the demand for timber land and the locality in which the land is? A. Yes.

Q. Isn't there another element that enters into the value of the timber land, doesn't it depend largely upon the amount of clear timber there is in it?

A. Yes, sir.

Q. Isn't there another element, doesn't it depend upon the kind of timber upon the land? A. Yes, sir.

Q. Now, what kind of timber is upon the land in the Blackfoot?

A. Well, there is different kinds; the timber is generally better on these flats than on the mountains.

Q. What kind of timber grow upon these lands?

A. Pine and fir.

Q. Any other kind? A. Not that is any account.

Q. Don't you get tamarack?

A. Yes; you get tamarack.

Q. Don't you get some spruce?

A. No; there may be an odd one now and again.

Q. Then the value of the land depends upon the quantity, the quality, the accessibility, and the amount of demand there may be for the timber in the open market, and

(Testimony of M. R. Stairs.)

the ease with which it may be placed in the open market, and the availability for useful purposes? A. Yes.

Q. Now, I will ask you to state whether in your answer to the questions of the gentleman upon the other side you took all of these things into consideration in making your answer with reference to the relative value of these pieces of timber?

A. Well, it was not explained to me, who had taken it up, where it was located, and all that kind of thing; it was, had I been over a piece that had been taken up.

Q. As a matter of fact, then, you want to be understood now to say that you don't want to estimate the relative value of any of these timber claims with the exception of those you have made a personal inspection of?

A. I would not like to undertake it.

Q. Have you made an examination of these claims for the purpose of preparing yourself to testify concerning this matter?

A. No, sir; I did not expect to be called up on this case at all.

Q. And have never made any special examination of any of these claims?

A. Why, yes; I spoke of Mickels and my own claim.

Q. I will ask you to state whether or not you can now tell the court the character, section, township, and range upon which any of these claims are located?

A. I don't know as I could just now; I think Mickels and his wife are on section eight, my own was on six.

Q. What township and range?

(Testimony of M. R. Stairs.)

A. I think it is fourteen—seventeen, if I am not mistaken.

Q. What part of section eight was taken up by Mickels and his wife? A. I can't exactly tell that.

Q. Can you tell what part of section six you are on?

A. I can't just now, until I see my papers.

Q. Can you give me a description?

A. I can take you there and show it to you.

Q. Could you tell me the part of the section, township and range of any of these entries that were made in the Blackfoot country in the summer of 1899 or in the fall of that year? A. Well, if you give me a plat I can.

Q. I am just asking you if you can do it without a plat?

A. Pretty hard for me to do it because I have not been doing that kind of work for some time, but I have been over most of the ground in the country.

Q. You are well acquainted with the country up there? A. Yes, sir.

Q. You don't know it by action, township and range?

A. I cannot subdivide it at all because I have not kept posted but I can go over the ground and follow the locations by each quarter section on it.

Q. Can you give the township and range in which the Dodd claim is? A. No, sir.

Q. Can you give the township in which the Harrison Dodd claim is located? A. No, sir; I cannot.

Q. Can you give me the township and section and range in which either of the Dodds have made an entry?

(Testimony of M. R. Stairs.)

A. No; I never paid any attention to it; they may have told me but it has left my memory.

Q. You could not, then, go up on the ground and identify any of these claims if you went upon the ground?

A. No; I could not at present.

Q. Now, when you sold your land to Mr. Cobban you sold because you thought you were getting a reasonable price for it, did you?

A. Well, I thought it was little enough.

Q. In other words you mean to say that you would be glad to get more?

A. To get more if I could get it I thought it was worth more.

By Mr. MAYNARD.—You thought it was worth more?

A. I thought it was worth more; yes.

Q. Now you stated, I believe, that your claim was sold for eight hundred and fifty dollars, how much timber was on that claim of yours?

A. Well, I did not estimate it very close, but I should judge there would be eight or nine hundred thousand feet.

Q. How much pine was there on it?

A. Well, I should judge there was two-thirds of it pine.

Q. What other kind of timber constituted the other one-third? A. Well, it was tamarack and fir.

Q. Can you tell now what the estimate was under which you sold to Mr. Cobban?

A. I don't know, though I estimated it; I estimated more than that.

(Testimony of M. R. Stairs.)

Q. You say now it was between eight and nine hundred thousand feet? A. I should judge it at that.

Q. Isn't it a fact that you made the claim that there was twelve hundred thousand feet upon this tract of land?

A. That is when I wanted to sell it; I would not estimate it at that now.

Q. Then you would have one estimate at which you would sell and another at which you would testify in court? A. Yes, sir.

Q. How long have you been in the liquor business on the Blackfoot? A. About twelve years.

Q. I will ask you to state what business you are in in Missoula? A. Same business.

Q. Whereabouts are you in business?

A. The Headquarters Saloon.

Q. Front street? A. Yes.

Q. Have you ever been in any other business during the past twelve years except the liquor business?

A. Yes, sir.

Q. What business have you been in?

A. I drove the stage line for four years and three months; that is, I did not drive it myself; it was driven under my instructions.

Q. Where is this Headquarters Saloon in Missoula on Front Street—what is the number on Front street?

A. I forget now whether it is twelve or thirteen.

Q. Near what other places?

A. Close to the First National Bank.

(Testimony of M. R. Stairs.)

Q. On the same side of the street as the First National Bank?

A. On the same side of the street, only in the next block.

Q. Not in the same block?

A. No; it is not in the same block.

Q. Is it farther east or west than the Jumbo?

A. It is right along side of it.

Q. It is between the Jumbo on one side and what on the other? A. The Montana.

Q. What is that? A. A saloon.

Q. There are three saloons in succession along there?

A. Yes, sir.

Q. Are there anything but saloons and liquor houses going west from there?

A. Yes, I believe there is a livery-stable, an undertaking establishment and some restaurant.

Q. How long have you been in business in Missoula, Mr. Stairs?

A. A little over two years and a half, I guess.

Q. You have not been in the same place all the time?

A. Yes, sir; that is, I have not been there steady, I have been up and down the Blackfoot running that place.

Q. You are still running the place up the Blackfoot, are you?

A. Well, I have been off and on, I am not now, that is, I hold the place.

Q. You testified a few moments ago, I believe, Mr.

(Testimony of M. R. Stairs.)

Stairs, that you knew more about the Mickels entry than you did about any other entry up there under the Timber and Stone Act?

A. Yes that is my latest memory, that is about the latest I was over any timber, his intersects my own claim.

Q. When was that you went over the Mickels entry?

A. Well, it was in 1899.

Q. Do you remember what part of the year?

A. Well, it was somewheres about the middle of the summer, I think.

Q. Was it as late as September?

A. I don't think it was.

Q. Was it as early as August?

A. It was somewheres about that.

Q. Was it as early as July?

A. Well, I could tell you better if I was in Missoula, I could get the dates there; I cannot remember; it was somewheres along in the summer.

Q. You made an especial examination of the Mickels claim for the purpose of estimating the timber on it, for the purpose of determining the character of the land?

A. Well, he took me with him to look the timber over.

Q. You did do that? A. Yes, sir.

Q. And in looking the timber over you found out the character of the land on which it stood?

A. Yes, sir.

(Testimony of M. R. Stairs.)

Q. You testified at the land office concerning that matter? A. Yes, sir.

Q. Now, you have a more definite knowledge with reference to the Mickels land than with reference to any of the other land concerning which you have testified to-day, say the Dodd entries, or the entries of any other person?

A. I did not pay any attention to their timber, because I did not know where they located.

Q. Then, in testifying as to the value of any timber upon their claims, your testimony is not to be relied on, is it? A. How is that?

Q. If you don't know where it is nor what the timber amounts to you could not tell what it is worth?

A. Not without I would see it.

Q. Now, you say you have not seen it and don't know where it is located? A. No, not the Dodd.

Q. Now, with reference to the entry made by the Dodds, do you know any of the facts or circumstances surrounding their making an entry of their timber land?

A. Why, no.

Q. To your own knowledge? A. No, sir.

Q. Were you at the land office at the time they made their final proofs? A. No, sir.

Q. Were you there at the time they made their entry of the land? A. I may have been in Missoula.

Q. You were not in the land office at that time?

A. No, sir.

(Testimony of M. R. Stairs.)

Q. You were not present at the time their proofs were taken? A. No, sir.

Q. Do you know who were their witnesses when they made their final proof? A. I do not remember.

Q. Do you know whether their witnesses were reliable people, were witnesses who would tell the truth upon their examination?

A. They are hard to find nowadays.

Q. You think it is hard to find people who tell the truth nowadays? A. Yes, sir.

Q. I will ask you to state if you know anything in connection with the Dodd entry that would lead you to believe that they were not made in just as good faith as your own entry? A. No, sir.

Q. What would you say with reference to the entries of any of the other parties there on the Blackfoot?

A. They may have thought they were making it in good faith, I would not want to judge them at all.

Q. You would not want to say but what they all made their entries in good faith from any knowledge you have concerning their entry?

A. I would not want to swear they believed anything different; they thought they were going according to law, I suppose.

Friday, March 7th, 1902, 10 o'clock A. M.

M. R. STAIRS, a witness heretofore examined, being recalled for further examination, testified as follows:

(Examination by Mr. MAYNARD.)

Q. Mr. Stairs, counsel asked you a great many questions on cross-examination last night, and one of the matters he referred to was the question of the elements that entered into the value of these entries, calling your attention to a good many elements which constituted its value. Now, you stated that your claim that you sold to Cobban was not as valuable as some of those that you knew of that were sold under these other arrangements?

A. Yes, sir.

Q. Now, did you, when you answered so, take into consideration the elements which constituted the value?

A. Yes, sir.

Q. You may state then wherein your piece was not as valuable as some of the pieces that you referred to.

A. Well, there is some that is closer to market, and any timber that stands nearer the river is more valuable than that that stands further back from the river.

Q. How far was your claim from the river?

A. My claim was six or seven miles from the river.

Q. And how with reference to some of these other claims that you refer to?

A. Well, there is some right along the side of the river, joining right onto the river.

Q. Can you name some of them?

(Testimony of M. R. Stairs.)

A. Well, I don't know as I can. I don't know as I can hardly tell who has taken them up, but they are all taken up, I guess, along the Blackfoot river. That is, about all of them.

Q. And taken up when, and under what circumstances?

By Mr. BICKFORD.—If you know.

Q. Yes, if you know.

A. Well, all I know is, that they told me they had claims taken up under this hundred dollar act.

By Mr. BICKFORD.—We now move to strike out the answer of the witness, as being irrelevant and immaterial and not given from any knowledge whatever which the witness has concerning the matter; and as a mere supposition upon his part.

Q. Counsel asks you some questions in regard to the difference between the way you took up your claim and those who took up the claims under this hundred dollar act as you call it. I wish that you would point out the difference as you yourself knew at the time between the two ways of taking up the land.

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial to any issues in this case, and as not being proper redirect examination.

A. Well, I thought that I was taking mine up legally, and I didn't think that they was.

(Testimony of M. R. Stairs.)

Recross-examination.

(By Judge BICKFORD.)

Q. In other words, you were the only saint in that community?

A. No, I don't claim to be the only saint. These people had made all their contracts and agreements, including how much they were going to get, and I didn't sell or bargain mine off at all.

By Mr. BICKFORD.—Before we go on with this recross-examination I will move to strike out the answer of the witness to the last question as incompetent, irrelevant and immaterial and not responsive to the question.

Q. You said in your examination yesterday that you didn't know of any contract or agreement that had been made between any of the parties up there for the sale of the land, didn't you?

A. Only from hearsay. That is, just what they told me.

Q. And you testified also that so far as being present when any of these contracts or agreements that you spoke about were made, that you never were present.

A. I believe I did.

Q. Well, you haven't remembered since your former cross-examination that you were present at any of these—when any contracts were made with any of these parties for the sale of the timber land, have you?

A. No, sir.

(Testimony of M. R. Stairs.)

Q. You say that you were not present?

A. Well, I didn't say before that I was present, did I?

Q. No, I don't say that you did. You didn't say you were present when any contract or agreement was made with any of these parties, did you?

A. No, sir.

Q. And from your own knowledge, you know nothing concerning any of them.

A. Only just as I was told.

Q. You have talked with counsel for the government since you were on the witness-stand, haven't you?

A. Yes, sir.

Q. Have you consulted with him about your testimony in this case? A. Not very much.

Q. You have some?

A. Well, he said there was some things he wanted to find out.

Q. Well, wouldn't you kindly be candid and open enough then and say whether you have or not?

A. Well, I told you I had, I spoke to him over there a moment ago.

Q. And then you went onto the witness-stand, after you had consulted with him with reference to what your testimony would be?

A. No, I didn't know what I would have to tell, and I don't intend to tell anything only when I am asked questions, and when I am asked to do it. All I know is what people told me.

(Testimony of M. R. Stairs.)

Q. And all of your testimony has been from what people have told you and not from your own personal knowledge?

A. Well, what little I knew and what they have told me, yes.

Redirect Examination.

(By Mr. MAYNARD.)

Q. I just want to ask you how many years you have lived up in the Blackfoot country?

A. About twelve years.

Q. Now then, you may tell these gentlemen the different kinds of business that you were engaged in during that time, if you please.

By Mr. BICKFORD.—He has already done that.

A. Well, I run the United States mail there for four years and a half—four years and three months; speculated in mines, raising stock, cattle and horses and ranching, and freighting for mines and camps.

Recross-examination.

(By Mr. BICKFORD.)

Q. You said I believe, that you had been engaged in the saloon business in Missoula for about two years and a half? A. Yes, sir.

Q. And you said, I believe, a minute ago that counsel for the government hadn't been talking to you concerning this matter.

A. No I didn't say that he hadn't.

Q. Did you say that he had?

(Testimony of M. R. Stairs.)

A. I said that I spoke to him, yes, sir.

Q. Did you say that you had spoken to him before you went on the witness-stand? A. Yes, sir.

Q. You had talked with him, spoken to him about it?

A. Yes, sir.

Q. Had you talked with anybody else concerning the testimony you were to give in this case?

A. No, not what I had to give, or what I had to say in the case. I was talking to Mr. Griswold.

Q. When were you talking with Mr. Griswold?

A. Ever since the case started.

Q. Haven't you been talking with him even longer than that?

A. Yes, sir, I have talked with him for the last seven or eight years.

Q. Where did you talk to him?

A. Wherever I would meet him on the Blackfoot.

Q. In your saloon in Missoula?

A. Yes, I talked with him there.

Q. Talked to him much there in your saloon in Missoula?

A. Yes, sir, I often asked him to take a drink, and he has asked me to take a drink.

Q. He never declined? A. No, sir.

Q. And Mr. Griswold is a frequenter of your place, is he? Goes in there very often?

A. Well, not very often. We live quite a ways apart.

Q. Mr. Griswold is living in Missoula now, isn't he?

(Testimony of M. R. Stairs.)

A. Yes, sir.

Q. Does he go in there, or did he go in there as often as once a week? A. No, I don't believe he does.

Q. Once a month?

A. Yes, once a month, I should guess.

Q. Not oftener than once a month?

A. Well, I couldn't tell exactly, he might be in there when I wouldn't be there. I am not there all the time.

Q. And you couldn't say whether he has been there once a month or not? A. No, sir.

Q. Did you always talk over this matter when Mr. Griswold went into your saloon?

A. Yes, occasionally.

Q. Quite a little, didn't you?

A. Spoke about it once in a while.

Q. Mr. Griswold and you have agreed as what your testimony would be in this matter, haven't you?

A. No, sir.

Q. Then you have disagreed about it?

A. No, we haven't talked about it either. We have talked about the case, but I never knew until the fourth whether I was going to be a witness or not on the case.

Q. Then you didn't dispute about what the condition of affairs was or is? A. No, sir.

Q. You agreed as to that? A. Yes, sir.

Q. What is your answer? A. Yes, sir.

Q. And then coming here you and Mr. Griswold had agreed as to the facts that you were to testify to if you went upon the witness-stand? A. No, sir.

(Testimony of M. R. Stairs.)

Q. Well, had you disputed about it; had you had any disagreements? A. Not as I know of.

Q. Well, isn't it a fact that your impressions and your testimony in this case had been based largely upon statements made to you by Mr. Griswold?

A. I didn't come here to swear to anything anybody else told me. I came here to answer questions that would be asked me as near as I could.

Q. Then you haven't sworn to what people have told you since you have been on the stand?

A. I don't swear to anything that isn't the truth. I swear to what they say whether it is the truth or not.

Q. You swear to what you heard too, didn't you?

A. Yes, sir.

Q. And you have in every instance that you have testified, given what had been told you, and what you knew of your own knowledge?

A. Well, I had formed an opinion that it was true.

Q. You had formed an opinion that it was the truth from what people had told you? A. Yes, sir.

Q. And you swore to it as the truth?

A. I answered the questions as well as I could.

Q. Well, now as a matter of fact you said on the witness-stand what people had told you, swore that that was true, because you had come to believe that it was true? A. I never swore it was true.

Q. And you don't now swear it is true?

A. No, sir.

(Testimony of M. R. Stairs.)

Q. And you swear now that you don't know whether it was true or not true? A. Yes, sir.

Q. You want to be understood on the record here as stating that you didn't know whether he told you the truth or not? A. Yes, sir, that is correct.

Q. You want it put upon the record, that you and Mr. Griswold didn't agree as to what the facts were that you and he talked over?

A. Well, we talked over several different things. We talked over matters that had been brought up here.

Q. Yes, and you state now that you have not agreed upon the statement of facts that you were to swear to?

A. Well, the facts in what way? I don't know.

Q. Well, the facts that you and Mr. Griswold talked over.

A. I don't know what you mean at all. I don't know what you are getting at.

Q. Well, I will go at it from the beginning, then, so that you may understand. In talking these matters over as you have testified, with Mr. Griswold—

A. I don't know as I talked these matters over with Mr. Griswold.

Q. You swear now that you didn't talk these matters over with Mr. Griswold? A. No, I don't swear that.

Q. Then there was no agreement between you and Mr. Griswold as to what your testimony would be?

A. No, sir.

Q. How did it happen that Mr. Griswold caused you to be subpoenaed here as a witness?

(Testimony of M. R. Stairs.)

A. Well, I talked about the case. I told him I had talked about it in some way, but not all.

Q. Then, so far as you talked it over with Mr. Griswold, you didn't agree with him then?

By Mr. MAYNARD.—Didn't agree with him, what do you mean?

By Mr. BICKFORD.—What do you mean by that? Well, as to the facts in the case I mean.

A. Well, I didn't know what the facts in the case were altogether.

Q. I will ask you if you had agreed with Mr. Griswold as to what the facts in the case were, and whether you had agreed with him as to what your testimony would be after you went on the witness-stand.

A. Might have, in some ways.

Q. Well, did you agree on some points and disagree as to others?

A. I don't know as we did. He never told me what to swear to.

Q. Can't you tell me whether you did agree or did not agree?

A. Well, if you will ask me what points it was I will explain.

Q. I don't know the points. I am asking you.

A. No, sir.

Q. Well, now I will ask you what points you agreed on with Mr. Griswold, or what points you didn't agree on.

(Testimony of M. R. Stairs.)

A. We never did agree because he didn't know what I was going to swear to.

Q. He didn't know then what you were going to swear to?

A. I don't know how he could. I never told him.

Q. Then in talking this matter over, you didn't talk about what the facts were in the case?

A. I talked to him, yes.

Q. Well, did you talk to him about what the facts in the case were?

A. Well, we talked over a few points in the case, yes.

Q. Well, did you agree with Mr. Griswold when you talked it over, or did you disagree as to those facts?

A. Well, if you will point out the facts, or what you want to find out I will answer it.

Q. That is your answer, is it?

A. Well, it is no answer at all because I don't know what you want to find out.

Q. Well, I just want to find out whether you agreed with Mr. Griswold or disagreed with him as to the facts you talked over with him with reference to this case.

By Mr. MAYNARD.—I object to the further cross-examination of this witness on this subject for the reason that the witness says that it is impossible for him to know what counsel asks of him. If he would ask him particularly as to certain facts and as to his testimony he will then answer as to whether or not he had agreed

(Testimony of M. R. Stairs.)

with Mr. Griswold in advance as to the testimony he was to give, but the wholesale asking of questions in this way is not proper, and cannot be understood by the witness, and neither I or anybody else can understand it.

A. Well, we might have talked about a good many things, but I don't remember whether we agreed or disagreed about that. We were talking about the case.

Q. You were talking about the case, but you don't remember whether you agreed or disagreed as to the facts in the case?

A. No, I don't remember whether we agreed or disagreed. We were talking about the case at different times.

M. R. STAIRS.

Subscribed and sworn to before me this eighth day of March, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

GEORGE P. JEMISON, a witness called by the complainant, after being first duly sworn by the Examiner, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Jemison, what is your name?

A. George P. Jemison.

Q. Where do you live, Mr. Jemison?

A. In the Bitterroot valley.

(Testimony of George P. Jemison.)

Q. In the Bitterroot valley? A. Yes, sir.

Q. Are you a brother of Albert Jemison?

A. Yes, sir.

Q. Are you a married man? A. Yes, sir.

Q. What was your wife's name before you were married? A. Mize. The full name do you want?

Q. Yes, sir. A. Recy M. Mize.

Q. Recy M. Mize? A. Yes, sir.

Q. She has relatives living in that valley too, has she not? A. Yes, sir.

Q. Who are they? A. James Mize.

Q. Who is he? A. He is her father.

Q. Is her mother living? A. No, sir.

Q. How far did you live from your sisters up there in the Bitterroot valley?

A. From one mile to a mile and a half.

Q. What?

A. I have one or two that lives about a mile and a half from me.

Q. Who are they?

A. One's name is Mrs. Roll, and the other is Mrs. Gillman.

Q. One's name is Laura Roll, and the other is Lavinia Gillman? A. Yes, sir.

Q. They have been sworn as witnesses in this case here, have they not?

A. I am not sure; I didn't see them.

Q. What is your age, Mr. Jemison?

A. I am twenty-eight years old.

(Testimony of George P. Jemison.)

Q. What is your occupation? A. Farmer.

Q. How much of a farm have you got?

A. A hundred and sixty acres.

Q. How far from Victor? A. Six miles.

Q. By what claim do you occupy this 160 acres?

A. Under the homestead act.

Q. Have you proved up yet? A. No, sir.

Q. How many years now before you can prove up?

A. In about two years.

Q. Have you any other interests in real estate besides this homestead claim?

A. Oh, I believe not, not that I know of.

Q. None that you know of? A. No, sir.

Q. Have you any personal property?

A. Yes, sir.

Q. What? A. I have horses and cattle.

Q. How many horses? A. Four head.

Q. How many head of cattle? A. Eight.

Q. What else have you got?

A. The tools it takes to run a small farm.

Q. That is all the real or personal property that you now have? A. Yes, to my recollection.

Q. You have as much now, have you not, as you have had at any time within the last five years?

A. No—no, I keep increasing.

Q. Well, have you got more than you have had at any time within the past five years?

A. I think so, because I hadn't taken this homestead up until three years ago.

(Testimony of George P. Jemison.)

Q. And before that you didn't have any real estate at all? A. No.

Q. Now, you took up with your mother and your father, and your sisters, and your brothers, and your sisters in law, and other relatives, a claim under the Stone and Timber Act, did you not?

A. Please ask the question again?

Q. Now, you took up with your mother and your father, and your sisters and your brothers, and your sisters in law, and other relatives, a claim under the Stone and Timber Act, did you not?

By Mr. BICKFORD.—We want to object to the form of the question in that it implies that the witness did these things jointly with others, when as a matter of fact, under this Timber and Stone Act, and other land laws of the United States, a person does the act of taking up the land individually, and not in connection with others, unless it be under the mineral land laws of the United States.

A. I took up a claim under the Stone and Timber Act.

Q. Now, Mr. Jemison, I want you to tell us what you did. You were living down there at the time, and I want you to tell us how you came to go up into the mountains to take up a timber and stone claim under the Stone and Timber Act. Go on and tell in your own way, but tell it as closely and keep close to your movements. I want to get the facts from you as soon as I can, and I know you can tell it, without any trouble.

(Testimony of George P. Jemison.)

A. I will tell it as near as I can recollect.

Q. That is right; how you happened to do it, etc.?

A. Well, I believe, one day as I was passing my sister's house, Mrs. Roll, she had received a letter from my mother at Clearwater, and the letter stated, I believe—

By Mr. BICKFORD.—We object to the witness stating the contents of the letter unless it is first shown that the letter mentioned is not obtainable.

(Witness continuing:) To tell me to come up and take a timber claim up; that the timber claims was going very fast, and that my brother would locate me.

Q. That was Albert Jemison, was it?

A. Yes, so I went up as quick as I could get ready, and there was some more that went with me. Mr. Gillman and his wife and my wife. We went up together in a wagon.

Q. Well, go on now as best you can, because he can take it down quick, you know.

A. Yes, but I have to wait for a recollection. We drove up there, and went up with Albert, I believe, and looked over the claims. I had been over these claims, of course, before, because I used to live there. We looked it up and run out the corners, and fixed the numbers of the section and the township, and so on, and came back. I believe it took us a day to do this. I believe then I went up one day and seen Griswold, and he came down and looked over the land. So that we would make no mistake, I believe he gave us the numbers of the section, the

(Testimony of George P. Jemison.)

quarters, and so on. Albert told me to inquire for Densmore and Cobban's office.

Q. Who did?

A. Albert Jemison—to employ him to do my business. So I went there, and he made out my papers. I then went over to the land office and filed. I think I done some other business after this, and then went home. He attended to all the business.

Q. Who attended to it?

A. Mr. Cobban, I believe.

Q. What do you mean by "attended to all the business"?

A. Why to the advertising and writing out my papers. The witnesses were with me, of course, when I was up there, Gillman and Eddy. Eddy didn't go with me, but he was up there, but Gillman and his wife went with me up there.

Q. Well, go on.

A. The time came to prove up and I watched the papers and went down to prove up. I believe Mr. Cobban was gone then when I done my business—attended to my business. It was with Catlin, I believe. We went to the land office and gave in our testimony. Catlin, I believe, taken the money over, and paid for the land, something like four hundred and twenty dollars, I think.

Q. Well, what did you do next?

A. I went back to their office and sold to them.

Q. Sold to who?

A. The papers was made out in Cobban's name. Catlin and Pond, I believe, done the business.

(Testimony of George P. Jemison.)

Q. And you received some money from Mr. Catlin?

A. Yes, sir.

Q. How much?

A. I figured up my expenses, I believe, and they offered me a hundred and twenty dollars for the claim.

Q. A hundred and twenty dollars?

A. Yes, sir, and the expenses I had been to, the advertising, and everything, and I took it.

Q. And then you went home?

A. Yes, sir, I had some business with the Missoula Mercantile Company, and I settled that up and went home the next day, or such a matter.

Q. That is what you made out of the deal?

By Mr. BICKFORD.—We object to that as leading.

A. No, sir.

Q. A hundred and twenty dollars, was it—you figured up the expenses, you say, and how much did they come to?

By Mr. BICKFORD.—We object to that as leading.

A. I couldn't tell you just now what the expenses did come to.

Q. Well, what expense were you to yourself?

By Mr. BICKFORD.—We object to that as leading, and for the further reason that it is irrelevant and immaterial to any of the issues in this case.

A. The advertising.

Q. Did you pay for the advertisement?

A. Out of this money, yes.

Q. Out of this money?

(Testimony of George P. Jemison.)

A. Yes, that is, it was figured up that way and counted as expense.

Q. Who figured it up? A. John Catlin, I believe.

Q. And what other things were counted as expenses?

A. I don't think there was anything that I recollect of now.

Q. Well, did you pay any expenses, that is, put in any claim for expenses, yourself?

A. I believe that they said they would give me a hundred and twenty dollars; and the expenses that I had been to, there was nothing said about that, I don't think.

Q. The expenses that you had been to? What did they come to?

By Mr. BICKFORD.—We object to that as leading, irrelevant, and immaterial to the issues in this case.

A. A hundred and twenty dollars, I think.

Q. A hundred and twenty dollars?

A. Well, I think it would.

Q. Well, what were the expenses that you had been put to, do you know?

A. Well, I had to go up there, and had to eat and had to feed my team.

Q. You paid that out of your own money, did you?

A. Certainly.

Q. The personal expenses of yourself and team in going up to the mountain and back. Now, what other elements of expense was there, if you can remember any?

By Mr. BICKFORD.—We object to that as leading.

Q. That would be how much?

(Testimony of George P. Jemison.)

By Mr. BICKFORD.—We object to that as leading.

A. I couldn't say what my expenses was. It wasn't very much because we camped out.

Q. And was nobody with you at the time you went to Cobban's office, and did as you have now testified about?

A. Yes, sir, to my recollection there was three or four others, and others in the office.

Q. Of your party, I mean?

A. Four of our party—three of our party.

Q. Were with you at the time? A. Yes, sir.

Q. Who were they, Mr. Jemison?

A. My wife, Mrs. Gillman and Mr. Gillman.

Q. Has your wife been subpoenaed, do you know?

A. No, sir.

Q. She took up a claim at the same time, did she?

A. Yes, sir.

Q. Did she prove up at the same time?

A. Yes, sir.

Q. Did your wife, Recy, go up with you into the mountains? A. Yes, sir.

Q. She made the filing at the same time?

By Mr. BICKFORD.—We object to that as leading.

A. Yes, sir.

Q. And made the proofs at the same time, did she?

By Mr. BICKFORD.—We object to that as being leading and irrelevant and immaterial.

A. Yes, sir.

Q. And where were you; were you at Cobban's office at the same time?

(Testimony of George P. Jemison.)

By Mr. BICKFORD.—We object to that as leading, and upon the further ground that it is irrelevant and immaterial as to whether there were or not.

A. Yes, sir.

Q. So the testimony that you have given relative to the facts of your entry apply to your wife's also?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial, and further that it is leading.

A. Yes, sir.

Q. And your wife joined in the one deed with you?

By Mr. BICKFORD.—We object to that on the ground that it is irrelevant and immaterial to the issues in this case, and further that it is not the best evidence. The deed itself, or a certified copy thereof, would be the best evidence of that fact.

A. I think so.

Q. And did she receive a hundred and twenty dollars, too?

By Mr. BICKFORD.—We object to that also as being leading and irrelevant and immaterial.

A. I think so.

Q. I show the witness his original application made under the Stone and Timber Act. (Counsel shows witness original statement in his entry in the case referred to.) Is that your signature, Mr. Jemison?

A. Yes, sir.

Q. You say this was filled in by Mr. Catlin?

(Testimony of George P. Jemison.)

A. Well, I couldn't say positive if he made out the papers or not.

Q. Well, this was at the time of filing, you know?

A. Yes, sir. Well he done my business.

Q. And your wife's the same way? A. Yes, sir.

Q. Do you know your wife's signature?

A. Yes, sir.

Q. Is this her signature? (Counsel shows witness paper, being original statement of the wife of witness, Recy Jemison.)

A. Yes, that is her handwriting.

Q. Now, I read from the original statement of George B. Jemison as follows: "I, George B. Jemison, of Victor, county of Ravalli, State of Montana, desiring to avail myself of the provisions of the act of Congress, etc., for the purchase of the southeast quarter of section four, township 14 north, range 15 west." This was on the July 26, 1899. Final proofs were made—

A. On the 29th of September.

Q. On the 29th of September, yes. A. Yes sir.

Q. The same is true in the case of your wife, Recy M. Jemison, as appears from the original paper in evidence in this case, and which I hold in my hand?

A. Yes, sir.

Q. On the same day, the 29th day of September, from the certified copy of the deed offered in evidence, it appears that George P. Jemison and his wife, Recy M. Jemison, of Victor, Montana, the parties of the first part, and R. M. Cobban, of Missoula, county of Missoula, State of

(Testimony of George P. Jemison.)

Montana, for and in consideration of the sum of two thousand dollars, conveyed the south half of the southwest quarter, the south half of the southeast quarter of section six, township fourteen north, range fifteen west, or lots ten, eleven and twelve, of section six, township fourteen, north, range fifteen west, containing a hundred and twenty-two and twelve-hundredths acres, and the southeast quarter of section four, township 14 north, range 15 west.

Q. Now, then, as I understand you, your wife, Recy, went with you up into the mountains at the time you went up to look over the land? A. Yes, sir.

Q. Did she go with you at the time when you went with Albert to look at these descriptions?

A. I don't think she looked at her land at the same time.

Q. Did she come back with you?

A. She went there with me and came back with me.

Q. Who did you go with, by yourself?

A. When I went up there?

Q. I mean when you went up to look at the land?

A. I went up with my wife, Mr. Gillman, and Mrs. Gillman.

Q. You went up into the mountains with them?

A. No, sir.

Q. I mean when you went to look at these locations?

A. I went with Albert Jemison, William Eddy, and Joshua C. Gillman.

Q. Your wife didn't go with you, then?

A. Not at that time.

(Testimony of George P. Jemison.)

Q. Did they take up claims then at the same time?

A. I believe so.

Q. How long was that you were gone?

A. I never have said how long the time was that I went up into the mountains.

Q. No, how long when you left Camp with Albert to go and look at the locations? A. I can't say.

Q. How far were these three locations from the camp?

A. Well, about—some were a mile, and some were a little over. I think it was three miles to my claim.

Q. You had never been on this claim before, had you?

A. Yes, sir, dozens of times.

Q. And for what purpose?

A. For the purpose of hunting deer, and driving the cattle through to the meadow and out.

Q. How long had it been before you made the location, when you were living up there? A. Yes, sir.

Q. How long a time would it be?

A. A little over a year.

Q. That you had moved down?

A. Into the Bitterroot valley.

Q. And how far were you living when you were living up in the Blackfoot, from this location.

A. About three miles at one time.

Q. How near at the other times?

A. One other time it was about nine miles, and the other time about twenty miles.

Q. Just previous to your moving down into the Bitterroot, which one of these three places were you living on?

(Testimony of George P. Jemison.)

A. I was living twenty miles from my claim.

Q. How long had you lived there?

A. About eight months.

Q. Then where did you live just before that?

A. About nine miles.

Q. How long had you lived there?

A. About the same.

Q. About eight months?

A. As near as I can recollect. I didn't take down any of these things, and I am only giving it as near as I can recollect.

Q. Where did you live before that?

A. I lived within three miles of the claim there.

Q. How long did you live there?

A. About six months.

Q. And how long—where did you live just before that then? A. In Bitterroot valley.

Q. How long did you live there?

A. I have been in the Bitterroot valley.

Q. Now, don't misunderstand me. You are living in the Bitterroot valley now.

A. Yes, sir.

Q. Had you lived in the Bitterroot valley previous to going up into the mountains?

A. Oh, yes, sir.

Q. How long had you lived there at that time?

A. I couldn't tell you the exact time.

Q. Well, how many months or years?

A. I think about eight years.

(Testimony of George P. Jemison.)

Q. Now, let me not misunderstand you. Do I understand you now that after having lived in the Bitterroot valley eight years or about eight years, you moved up into the Blackfoot country and lived on these three different locations the length of time you have sworn to, and then moved back again into the Bitterroot?

A. Yes, sir.

Q. Where you are living now? A. Yes, sir.

Q. And you are familiar with the general lay of the land, and your location was entered during your residence as you have not testified?

A. In the Blackfoot?

Q. Yes, sir. A. Yes, sir.

Q. When you went with Albert had Mr. Griswold showed up at this time? A. No, sir.

Q. Did he come—you say you went back the next day after you went up into the mountains?

A. Back where?

Q. Back home, back to Missoula.

A. No, sir; I don't think I said that.

Q. How long was that?

A. Before I went back?

Q. Yes.

A. I think I was there two days before I returned home. Returned to Missoula and from Missoula home.

Q. And during these two dates, did Mr. Griswold come to the camp?

(Testimony of George P. Jemison.)

By Mr. BICKFORD.—We object to that as leading, and further as irrelevant and immaterial.

A. No, sir; I went after him before he came.

Q. Didn't you see Mr. Griswold? A. No, sir.

Q. Where was he?

A. At home at the Clearwater.

Q. What did you go there for?

A. I went there to see him.

Q. For what purpose?

A. To get him to come down to look at the land.

Q. That Albert had located for you?

A. Yes, sir.

Q. Why did you want Mr. Griswold to go and look at the land?

A. He was in that business of locating and making out numbers.

Q. What did he say when you saw him?

By Mr. BICKFORD.—We object to that as hearsay, and as being irrelevant and immaterial to the issues in this case.

Q. What did he say?

A. What did Mr. Griswold do?

Q. Yes, when you told him you wanted him to come and look over your timber claim?

A. He said, "I have got so much to do I cannot come right away, but I will be down as quick as I can."

Q. Who went with you? A. Mr. Gillman.

Q. You may state as to whether he came or not?

A. He did.

(Testimony of George P. Jemison.)

Q. When?

A. He came, I believe—I ain't positive, but I believe he came the next day. I believe it was the next day that I saw him. Either the next day or the next day after.

Q. Either the next day, or the next day after?

A. Yes, sir, he came down as quick as he could, I have forgotten whether he came the next day or the next.

Q. Well, you were up there? A. Yes, sir.

Q. Did he come while you were up there?

A. Yes, sir.

Q. What did he do?

A. Well, when he came there we all went up into the mountains again and looked over the lands, and looked over the land again.

Q. Who was with Mr. Griswold at that time?

A. Me and Albert and William Eddy and Joshua Gillman.

Q. Wasn't your wife along at any of these times?

A. Not at this time.

Q. Do you know of her going out to her location?

A. Albert went with her.

Q. You didn't go?

A. When she went Albert went. I didn't go with her.

Q. How long was Mr. Griswold up there with your party?

(Testimony of George P. Jemison.)

A. We located our claims, we looked all over them, I believe, in one day.

Q. How many claims? A. Five claims I think.

Q. And you say that Mr. Griswold, after he got through, gave you the numbers for the purpose of filing?

By Mr. BICKFORD.—We object to that as being leading, and as not having been testified to by the witness.

A. Yes, sir.

Q. What did you say, Mr. Jemison? A. Yes, sir.

Q. And you had sworn when you were making a statement that he had given you the names of the witnesses, I believe?

By Mr. BICKFORD.—He hasn't so testified yet.

A. No. sir.

Q. Well, did he? When he gave you the paper with the descriptions on, did he also give you the names of the witnesses?

By Mr. BICKFORD.—We object to that as being leading.

A. If I remember right I think there was something about the witnesses. We agreed on the witnesses I think right there, if my recollection serves me right.

Q. Then, who did you say told you to go to Cobban and Densmore's office?

A. I said Albert Jemison.

Q. You took the paper with you that you had received, and you and your wife went as Albert had told you, to Cobban and Densmore's office?

(Testimony of George P. Jemison.)

By Mr. BICKFORD.—We object to that for the reason that it is leading and further that it is irrelevant and immaterial.

A. Yes, sir.

Q. You hadn't seen any of the parties up to this time, had you?

A. Yes, sir; I had been acquainted with Mr. Catlin a number of years before this. I knew Mr. Catlin.

Q. I mean with reference to this business?

A. No, sir.

Q. No talk with Cobban or Catlin or Pond or anybody else? A. No, sir.

Q. Did I understand you to say that either Mr. Griswold or Albert went with you to Missoula?

A. No, sir; there was not—I don't know of them going. They didn't go in my rig anyhow.

Q. And just who were in your rig, you and your wife, and who else?

A. Gilman and his wife.

Q. And you four, after you got to Missoula went to Cobban and Densmore's office as you had been directed?

A. Yes, sir.

Q. What did you do there?

A. We had Mr. Cobban to make out our papers, I believe, for filing.

Q. Do you remember who introduced the party?

A. If I remember right, Mr. Gillman had met Cobban on the street or something of that kind and had

(Testimony of George P. Jemison.)

seen him before and he was the one that introduced us to Mr. Cobban.

Q. To Mr. Who?

A. To Mr. Cobban when we went to file.

Q. That was the first time that you had ever met Mr. Cobban? A. Yes, sir.

Q. How long were you in the office, your party?

A. I should judge we were there about an hour.

Q. Were the filing papers made out there in the office? A. Yes, sir; I think they was.

Q. And then you say they went with you to the land office?

A. No, sir; I didn't say that. I never said that he went with us—that is, when we went.

Q. Not when you went, not with you?

A. The rest of them, they was with me.

Q. Did anybody go with you from Mr. Cobban's office? A. No, sir.

Q. You just got the papers that had been made out in Cobban's office, and took them there and filed them?

A. Yes, sir.

Q. And then you and your wife went home, did you?

A. Yes, sir; we didn't stay there no length of time.

Q. And where were you during this sixty days that elapsed between the time of your filing and making final proof?

A. I was at home. I wasn't where I live now. I was on a rented ranch.

Q. Working there? A. Yes, sir.

(Testimony of George P. Jemison.)

Q. I understood you to say that in Cobban's office the understanding was that they were to do the advertising and do all the work.

By Mr. BICKFORD.—We object to any testimony of this kind as to what the understanding was there at Cobban's office and we also object to any questions and answers concerning any understanding as being leading.

By Mr. WALSH.—We object further because no such testimony has been given by the witness.

Q. Well, that was true, wasn't it?

By Mr. BICKFORD.—We object to any testimony of this kind as to what the understanding was there at Cobban's office and we also object to any questions and answers concerning any understanding as being leading.

By Mr. WALSH.—We object further because no such testimony has been given by the witness.

A. Well, now, ask me the question that you want me to answer first.

Q. I understood you to say that in Mr. Cobban's office the understanding was that they were to do the advertising and to do all the work?

A. My business?

Q. Yes, is that so? A. Yes, sir.

Q. At the end of the sixty day limit you and your wife returned to make your final proofs?

A. Yes, sir.

Q. Who else came with you? That is, of your party,

(Testimony of George P. Jemison.)

who made the final proofs on that day, if you can remember?

A. Mr. Eddy, Mr. Gillman, Mrs. Gillman and my wife and myself.

Q. All made final proofs? A. Yes, sir.

Q. Had you been to town between these sixty days?

A. Not in Missoula.

Q. Had you seen Mr. Cobban or Mr. Catlin in the meantime? A. No, sir.

Q. Had no business at all with them in any way?

A. No, sir.

Q. When you came to prove up as I understand you and came back to Missoula, you found that Mr. Cobban was out of town? A. Yes, sir.

Q. So that you didn't see him at all?

A. No, sir.

Q. And your business was transacted with whom?

A. With Mr. Pond and Mr. Catlin.

Q. Did your party that you have just named, did they go to Cobban and Catlin's office previous to their going to the land office to file? A. No, sir.

Q. Went directly to the land office?

A. I don't understand that question. Maybe I answered it wrong.

Q. Did your party that you have just named go to Cobban and Catlin's office previous to their going to the land office to file? A. I believe they did.

Q. Well, you know whether you did or did not, don't you? A. Yes, I did.

Q. Were the others with you?

(Testimony of George P. Jemison.)

A. Some of them was, came there shortly afterwards, I believe.

Q. Then where did you go to from Cobban and Catlin's office?

A. After we made arrangements there, I believe that Pond and Catlin went there to the land office with us and we made our final proofs.

Q. And then where did you go after you made your final proofs? A. Went to Cobban's office.

Q. Back again? A. Yes, sir.

Q. And conveyed the land to him?

By Mr. BICKFORD.—We object to that as leading.

A. Yes, sir.

Q. And the money for the payment of the land of yourself and wife was paid in as I understand it by Mr. Cobban and Mr. Catlin?

By Mr. BICKFORD.—We object to that as leading, and upon the further ground that the witness has not testified to any such fact.

A. Yes, sir.

By Mr. WALSH.—We now to strike out the word "Cobban" in the foregoing question and answer, for the reason that the testimony of the witness heretofore given is that Mr. Cobban was not present at the time mentioned.

Q. Had you seen anybody in regard to this land, in regard to selling it to anybody except to the Cobban people?

(Testimony of George P. Jemison.)

By Mr. BICKFORD.—We object to that upon the ground that it is leading and irrelevant and immaterial, having no bearing upon the issues in this case.

A. No, sir.

Q. You expected to sell to Mr. Cobban, did you not?

By Mr. BICKFORD.—We object to that as being leading, and for the further reason as calling for a conclusion from the witness as to the matter and not a statement of fact.

A. I did, sir; when I got my final proof.

Q. When you got your final proof you planned to sell to Mr. Cobban?

By Mr. BICKFORD.—We object to that and move to strike it out for the reason that the question is leading, and calls for a conclusion of the witness and not a statement of any fact.

A. Yes, sir.

Q. You knew how much you were to get, did you not?

By Mr. WALSH.—We object to that as being leading, and irrelevant and immaterial to the issues in this case.

A. No, sir.

Q. You didn't? A. No, sir.

Q. Nothing said to you about that?

By Mr. WALSH.—We object to that as being leading and irrelevant and immaterial to the issues in this case.

A. No, sir.

Q. By anybody? What is your answer?

(Testimony of George P. Jemison.)

By Mr. BICKFORD.—We object to that as being leading and irrelevant and immaterial to the issues in this case.

A. No, sir.

Q. The subject matter of how much you were to receive from Mr. Cobban never was spoken of to you in any way.

By Mr. BICKFORD.—That is objected to for the reason that it is leading, and irrelevant and immaterial.

A. No, sir.

Q. Who told you that you were to sell to Mr. Cobban?

By Mr. WALSH.—We object to that upon the ground that it is irrelevant and immaterial and hearsay, and further upon the ground that it assumes that somebody had told the witness that he was going to sell to Mr. Cobban.

Q. Nobody? A. No, sir.

Q. When did you find out that you could sell to Mr. Cobban?

A. When I went from the land office over to his office.

Q. After you had proved up? A. Yes, sir.

Q. And do you wish to be understood as swearing that that was the first time you knew anything about the fact that you were to sell to Mr. Cobban?

By Mr. BICKFORD.—We object to that for the reason that it is irrelevant and immaterial and an attempt on the part of counsel for the Government to cross-ex-

(Testimony of George P. Jemison.)

amine his own witness, and the matter is irrelevant and immaterial.

A. I wish to be understood that I asked no questions.

Q. You understand that you were to ask no questions?

By Mr. BICKFORD.—We object to that for the reason that it is the conclusion of counsel and not of the witness, and further the question assumes that the witness has testified to a fact which in truth and in fact he has not.

Q. Who gave you to understand that you were to ask no questions?

By Mr. BICKFORD.—We object to that for the reason that it is the conclusion of counsel and not of the witness, and further, the question assumes that the witness has testified to a fact which in truth and fact he has not, and further, that it calls for hearsay testimony.

A. Albert Jemison.

Q. Where was Albert when he gave you so to understand?

By Mr. BICKFORD.—We object to that for the reason that it is a conclusion of counsel, and not a statement of the witness; and for the further reason, that the question assumes that the witness has testified to a fact when he has not done so; and also that it calls for hearsay testimony.

A. I couldn't say where he was.

(Testimony of George P. Jemison.)

Q. Up in the mountains?

By Mr. BICKFORD.—We object to the question for the reason that it is leading, and an attempt on the part of counsel to cross-examine his own witness.

A. I wouldn't be positive.

Q. You wouldn't be positive? What do you mean, that you cannot exactly locate the place?

A. No, sir; it was there, some place up there.

Q. Up there in the mountains? A. Yes, sir.

Cross-examination.

(By Mr. BICKFORD.)

Q. You say that you are twenty-eight years old?

A. Yes, sir.

Q. Are you a citizen of the United States?

A. I believe I am.

Q. Have you ever made a timber and stone entry, or had you before you made this one in the Blackfoot country? A. No, sir.

Q. You deem yourself a qualified entryman under the Stone and Timber Act, do you? A. I do.

Q. And you did then? A. Yes, sir.

Q. You went upon the land and examined it for yourself, did you? A. Yes, sir.

Q. And made your application for the land when you had been upon it? A. Yes, sir.

Q. Now, at the time when you went into the United States land office to make your application for the land, you made a certain statement to the land office officers with reference to what your intentions were with refer-

(Testimony of George P. Jemison.)

ence to the land, and among other things that the land did not, as you verily believed, contain any valuable deposit of gold, silver, cinnabar, copper or coal?

A. Yes, sir.

Q. That was true, wasn't it? A. Yes, sir.

Q. You stated that you had made no other application under the Stone and Timber Act? A. Yes, sir.

Q. That was true, was it not? A. Yes, sir.

Q. You said you hadn't applied to purchase the land mentioned on speculation but in good faith, to appropriate it to your own exclusive use and benefit?

A. Yes, sir.

Q. That was true, was it not? A. Yes, sir.

Q. And also that you had not directly or indirectly made any agreement or contract or in any way or manner, with any person or persons whomsoever, by which the title which you might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except yourself?

A. Yes, sir.

Q. That was true, was it not? A. Yes, sir.

Q. Now, at the time when you went to the United States land office to make your final proof with your witnesses, you and your witnesses, as I understand it, appeared before the land offices in Missoula?

A. Yes, sir.

Q. There certain questions were read to you as to the land? A. Yes, sir.

Q. And how old you were, and that sort of thing,

(Testimony of George P. Jemison.)

which questions were reduced to writing and set down by the officers. You remember the fact of that having been done, don't you? A. Yes, sir; I believe so.

Q. Now, in that testimony you stated that the land was valuable chiefly for the timber on it? Is that true?

A. Yes, sir.

Q. That the land was not valuable for agricultural purposes, was it? A. No, sir.

Q. Nor did it have any other value except its value as timber land?

A. Not that I know of, I believe not.

Q. That was the testimony that you gave, was it?

A. Yes, sir; it was.

Q. Now, at this time, which was something later, sixty or some odd days after the time when you had made your first application for the land, and in your testimony before the land officers, you were asked this question: "Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner, with any person whomsoever, by which the title you may acquire from the Government of the United States may inure in whole, or in part, to the benefit of any person except yourself?" To which you answered, " I have not." Was that answer correct, Mr. Jemison? A. Yes, sir.

Q. You were asked this question, too, Mr. Jemison: "Do you make this entry in good faith for the appropriation of the land exclusively to your own use, and

(Testimony of George P. Jemison.)

not to the use or benefit of any other person?" To which you answered, "I did." Was that true?

A. Yes, sir.

Q. You have said in answer to another question which was as follows: "Has any other person than yourself, or has any firm, corporation or association, any interest in the entry you are now making, or in the land, or in the timber thereon?" To which you answered, "No, sir." Was that true?

A. Yes, sir; that was true.

Q. In other words, you had never made any bargain or agreement or contract by which you were bound to sell the land to any person?

A. No, sir; I wasn't under any obligations to anybody.

Q. Now, do you know whether your wife ever located—ever looked at the land which she entered and located?

A. I never saw her look at it.

Q. Do you know that she started to go to look at the land? A. Yes, sir.

Q. When was it that she went to look at the land?

A. I don't remember.

Q. When you first went out into the Blackfoot to make these entries you said she went with Albert, I believe, in your examination in chief.

A. Yes, but I don't believe it was at that time. It was another time, I think.

Q. It was at another time?

(Testimony of George P. Jemison.)

A. Yes, sir; I think so.

Q. Was it before she made her entry in the land office, or about that time? A. About that time.

Q. About the time that she made her entry?

A. Yes, sir.

Q. Well, now, as I understand you, John B. Catlin is a land attorney, is he not?

A. Yes, sir; was at that time, I understood.

Q. Was at that time. And you employed him to look after your land entry for you?

A. No, the first time it was Cobban.

Q. Well, I am asking now about your final proof, at the time of your making final proof?

A. Yes, sir; I believe that is it.

Q. At the time of your making your final proof, Mr. Catlin looked after your interests?

A. Yes, him and Mr. Pond, as I understood it, he was going on with the business that I had as Mr. Cobban started to do.

Q. With this land entry? A. Yes, sir.

Q. And when Mr. Catlin went to the land office to pay the money into the land office, he went there as your attorney for that purpose? A. Yes, sir.

Q. That is what I understand. You understood all this time that you were getting this money by way of a loan, did you not? A. Yes, sir.

Q. And that the money was to be paid by you to the parties loaning it to you? A. Yes, sir.

(Testimony of George P. Jemison.)

Q. And that the money was to be repaid by you to the parties loaning it to you? A. Yes, sir.

Q. Well, was anything ever said to you by anybody about the purchase of your land prior to the time of your making final proof? A. No, sir.

Q. When was it then that you first concluded to sell the land?

A. When I went from the land office to that office.

Q. It was after you had received your final receipt as I understand it? A. Yes, sir.

Q. And after you had made your final proof?

A. Yes, sir.

Q. You testified I believe that you had made no effort to sell the land to any other person prior to your sale of it to Mr. Cobban? A. Yes, sir.

Q. You so testified, did you not? A. Yes, sir.

Q. I will ask you to state if you had any knowledge with reference to being able to sell the land to any other person, or whether you had consulted anybody with reference to the price which could be obtained for timber land?

A. Yes, if my recollection serves me right, my mother told me that Mrs. Dildine had made an effort to sell to the Blackfoot Milling Company.

Q. Had her efforts been successful?

A. I believe that they were not buying land.

Q. Well, concerning your wife selling the land, had

(Testimony of Mrs. Emma Dildine.)

she made any contract or agreement to sell the land prior to her making final proof?

A. No, sir; not to my knowledge.

GEORGE P. JEMISON.

Subscribed and sworn to before me this eighth day of March, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

Mrs. EMMA DILDINE, a witness called by the complaint, being first duly sworn by the Examiner, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Where do you live, Mrs. Dildine?

A. In Missoula.

Q. Are you a sister of Albert Jemison?

A. Yes, sir.

Q. And the wife of George Dildine?

A. Yes, sir.

Q. He has been sworn here as a witness, has he not?

A. I think he has.

Q. You were not in the city at the time?

A. No, sir.

Q. What is your husband's business?

A. He is a contractor.

Q. When did you reach the city, Mrs. Dildine?

A. Yesterday, sometime in the afternoon.

Q. Who did you come with? A. Myself.

(Testimony of Mrs. Emma Dildine.)

Q. Anybody else? A. The car was full.

Q You know very well what I mean, Mrs. Dildine. I am asking you, Mrs. Dildine, as to whether you had anybody in your company?

A. No, not to come here to Helena on this business.

Q. Where are you stopping now?

A. At the Cosmopolitan.

Q. When did you first see Mr. Cobban after you arrived in the city?

A. Why, yesterday, I think I seen him.

Q. In the office here? A. In here, yes, sir.

Q. Did you come directly here to the office?

A. Yes, sir.

Q. How many times have you seen him since?

A. Why, this morning here; this morning.

Q. Any other place? A. No, sir.

Q. Were you—either you or your husband indicted for perjury?

A. Yes, I guess that is what it means, indictment to come here to testify.

Q. No, no; not a subpoena, but were you indicted by the Grand Jury for perjury?

A. Why, I don't believe I was. All I know was when the paper was read to me—when the subpoena was read. No, I wasn't indicted for perjury.

Q. Now, all I asked you was, if your husband was indicted?

A. I believe he was; he came over here in August.

Q. You know that he was?

A. Yes, sir; I think that is what he came for.

(Testimony of Mrs. Emma Dildine.)

Q. The proceedings are still pending against him, so far as you know? A. I don't know.

Q. You have been at Mr. Walsh's office since you have been here? A. No, sir.

Q. Have had no talk with him?

A. I just spoke to him here in the office.

Q. Did you have any talk with Judge Bickford?

A. No, sir; I don't know the gentleman.

Q. How many conversations have you had with Mr. Walsh? A. Once, I think I spoke to him.

Q. Is that all? A. Yes, sir.

Q. In regard to your testimony here?

A. No, I don't think it was.

Q. You don't think it was; don't you know?

A. No, I didn't speak to him in regard to my testimony.

Q. Had you ever seen him before?

A. Never had seen him before.

Q. Did he introduce himself to you as one of your husband's attorneys? A. I don't think he did.

Q. Did you know that fact?

A. I think I heard some one else say so.

Q. So that you knew that he was your husband's attorney? A. Well, not positively.

Q. Who had told you before that he was your husband's attorney?

A. Why, I think I heard someone mention his name. Mr. Walsh is one of the attorneys, but I don't know on which side.

Q. You don't know on which side?

(Testimony of Mrs. Emma Dildine.)

A. I think my brother told me yesterday that he was on the defendant's side.

Q. What brother was that?

A. George P. Jemison.

Q. That is the man who has just left the stand?

A. Yes, sir.

Q. Now, Mrs. Dildine, you made an entry under the Stone and Timber, I believe, on or about the 31st of July, 1899? A. I think it was in the fall.

Q. July isn't in the fall, is it?

A. I thought it was in September.

(Counsel shows the witness her application in the matter of her entry under the Stone and Timber Act.)

A. Oh, yes; when I made the filing.

By Mr. WALSH.—You asked her when the entry was made. The entry is made when the final proof is made.

By Mr. MAYNARD.—I used the word entry; I will call it the application.

Q. At the time you made your application?

A. Yes, sir.

Q. Do you recognize this as your signature?

A. It looks a little like it.

Q. Looks a little like it? A. Yes, sir.

Q. Well, what have you to say as to whether or not that is your signature?

A. Well, I suppose it is, because I made a filing at that time, but I couldn't swear to it. I made a filing, and I suppose it is my signature.

Q. But aside from the fact of your filing at the time,

(Testimony of Mrs. Emma Dildine.)

and making your claim there, you don't know whether that is your signature or not?

A. I suppose it is, but I couldn't swear that it is my handwriting.

Q. Well, what is there about the signature that you are unable to say that it is your writing?

A. Well, there are a good many people write alike—white like I do. I suppose it is mine, though, because I filed about that time.

Q. Do you remember of giving any testimony at the time you made your final proof, Mrs. Dildine?

A. Final proof, when?

Q. At the time of your making this application—making this entry.

A. You mean testimony. In what way?

Q. You remember going to the land office about sixty days after you made this application and giving some testimony, and signing your name again?

A. When I proved up?

Q. Yes.

A. Yes; that is, I proved up.

Q. When you proved up, you say; you see your name there, don't you, Emma Dildine? A. Yes.

Q. Now, what have you to say as to whether or not that is your signature?

A. Well, I suppose it is. It is on my papers that I proved up on.

Q. I read from your sworn statement: "I, Emma Dildine, of Missoula, Missoula County, Montana, desiring to avail myself of the provisions of the act of Congress

(Testimony of Mrs. Emma Dildine.)

of June 3d 1878, entitled, etc., for the purchase of the east half of the southeast quarter, and the southwest quarter of the southeast quarter, and the southeast quarter of the southwest quarter of section twelve, township 14 north, range 15 west, in the district of lands, subject to sale at Missoula. Witness, etc., giving testimony in support of her application on the 7th of October, 1899, as appears from the original testimony, signed by her, in my possession, and which I read. On the same day, the 7th of October, 1899, as I read from the certified copy of the deed, George Dildine and Emma Dildine conveyed to R. M. Cobban the east half of the southwest quarter, and the southwest quarter of the southeast quarter, and the southeast quarter of the southwest quarter of section 12, township 14 north, range 15 west.

By Mr. BICKFORD.—All this we move be stricken out for the reason that it is argumentative simply, and the witness has not been asked, nor has she answered any question touching the matter referred to.

Q. Now, Mrs. Dildine, I wish you would go on in your own way, and tell us just the facts and circumstances connected with your taking up this location.

A. Well, I see by the papers that I was entitled to a piece of land, and I went and took it.

Q. What?

A. Went on it and looked it over and came to town and filed on it. My brother had told me of this piece of land for a year or two before.

Q. What brother?

(Testimony of Mrs. Emma Dildine.)

A. Albert Jemison—that was vacant there, and we heard that a Michigan company was coming in and going to start up a mill, and so I went and located the land after looking over it, and came down and filed on it.

Q. What did you say led you to make this entry?

A. I seen it in the paper, and it was rumored around that this company was coming in to put in a saw mill, and I knew of this land being taken there. My brother told me when it was, and told me where it lay, and before we went on the land, a few days before or so, we drove past the land, and me and my husband went over the land, and looked at it, and then we came to Missoula and filed on it.

Q. You were living in the city of Missoula at the time?

A. Yes, sir.

Q. How long have you been married to Mr. Dildine?

A. How long have I?

Q. Yes, sir.

A. Going on twenty-one years—twenty-three years.

Q. And what was your name previous to your marriage? A. Emma Jemison.

Q. Where were you living previous to your marriage?

A. In Kansas.

Q. And you have been living with Mr. Dildine for 21 years?

A. Yes, 23 I guess. Yes, twenty-three.

Q. What paper did you read this in, Mrs. Dildine?

A. In the Missoula papers.

Q. In what? A. In the Missoula papers.

(Testimony of Mrs. Emma Dildine.)

Q. What did you read there?

A. Well, I was reading in the notices. The people advertising and taking up claims, and they were selling claims, and I seen where they had sold their timber claims.

Q. You saw the advertisements?

A. Yes, sir; saw the advertisements; and it was rumored around that people were taking up claims, and that every person, 21 years of age, was entitled to a piece of land. That is how I understand it.

Q. Your sisters were living up near Victor, were they not? A. Yes, sir.

Q. Did you know of the fact of their going up there to make locations?

A. I heard they had gone up.

Q. Did they go before or after you went?

A. Well some had went about the time that I had, and I think some before and some after. I couldn't exactly say how that was.

Q. Well, how many went before?

A. I couldn't say.

Q. You know that some of them went, don't you?

A. Well, I couldn't say whether they went before or after the time. I couldn't say as to that, but I think that Gillmans and George P. Jemison were up there when I was there, but in a different camp.

Q. Oh, they were up there when you went up there?

A. Yes, I think they were, but I don't—wasn't where they was. I heard they was there. We went up for a summer outing, and to look at these claims, too.

(Testimony of Mrs. Emma Dildine.)

Q. Who else were up there?

A. Mrs. Roll, Mr. Yarger, and Mrs. Yarger were having an outing to look at the timber land.

Q. That is, Calvin Yarger.

A. Yes, sir.

Q. Where is he? A. He is right here.

Q. Where is Mrs. Yarger?

A. I heard she was away.

Q. Where is Mrs. Roll?

A. She is home, I think, in Victor now.

Q. How did you happen to go up to look at this land, and how did you go? A. I went in a wagon.

Q. All the way up in a wagon? A. Yes, sir.

Q. And camped out? A. Yes, sir.

Q. How long were you in camp?

A. Well, I think about a week.

Q. You were up in the mountains about a week?

A. Yes, sir.

Q. That is where you—do you mean the week embracing the time that elapsed between your leaving time and getting back home?

A. I think it was. I think it was about a week. I am not positive, but I think it was.

Q. From the time you left home to the time you got back? A. Yes, sir.

Q. How long a time did it take you to go up there?

A. I think a day and a half or two days.

Q. You went all the way up in a wagon?

A. Yes, sir.

(Testimony of Mrs. Emma Dildine.)

Q. Did you return in the same way?

A. Yes, sir.

Q. Had you ever seen, previous to your going up there, Mr. Cobban?

A. I never was acquainted with Mr. Cobban or Mr.—

Q. Catlin?

A. I wasn't acquainted with Mr. Cobban. Mr. Cobban, I didn't know him until I went to see him. I don't think I had ever spoken to him until then.

Q. When did you say you went to sell to him?

A. Well, I think it was about a week after I proved up. I think it was about a week.

Q. After you proved up?

A. Yes, inside of a week, I will say.

Q. Well—how did you happen to go to Mr. Cobban's to sell him the land?

A. Mr. McLeod referred me to Cobban. He said that they were buying lands, but that the Blackfoot Milling Company were not handling lands. That is the reason I went to Mr. Cobban.

Q. Who was Mr. McLeod?

A. He was the manager of the Blackfoot Milling Company. He had been before that, but he wasn't in the business any more, and he said that Mr. Cobban and Densmore were buying land, and I could probably sell to them.

Q. Where is Mr. McLeod?

A. He is in Missoula, Montana. He didn't know my name when I asked him about selling the land to him.

(Testimony of Mrs. Emma Dildine.)

Q. What?

A. I say I didn't tell him who I was when I went to sell him the land, but I think he will remember the circumstances, and how he didn't ask me who I was, or where I lived. He just simply told me that he wasn't in that business.

Q. How many days after you proved up did you see Mr. McLeod?

A. I think it was three or four days after I proved up. I ain't sure.

Q. Whereabouts was he?

A. He was in the Missoula Mercantile store. I went in there to see him, and another gentleman pointed him out to me. I had never met the gentleman before that to know him.

Q. Well, was he working there?

A. He was their manager. Mr. McLeod is the Missoula Mercantile Company's manager.

Q. He was the manager, then?

A. Yes, then, but I think he has changed positions since. He said that he was not buying land. I asked him if he was buying land but he said not when I went to see him and he told me he wasn't in that business now and referred me to Cobban & Dinsmore.

Q. And that is your best recollection?

A. Yes, sir.

Q. How many days after you proved up was this?

A. Well, I think it was inside of four days. I don't think it was any longer.

(Testimony of Mrs. Emma Dildine.)

Q. Well, was it four days?

A. I couldn't say positively. It was a few days afterwards.

Q. You are sure of that?

A. Yes, I think it was after I proved up because my sisters, and we all talked it over after we had proved up and agreed that we would sell to Cobban & Dinsmore after McLeod said he would not buy.

Q. Now, the record shows that you conveyed to Cobban the very same day that you proved up?

A. Well, I don't think I did. I thought that Mr. Catlin brought the deed up to my house inside of a week after I had proved up. I asked him what that was, and he said, why that is the returns from Washington, and he said, why, you haven't signed no deed, and I said no, that is so I haven't. No, let us see, what was that. No, I don't think it was a deed.

Q. What paper is it that was signed?

A. Let me see, what paper is it that we signed to Mr. Catlin after I got my returns from Washington?

By Mr. BICKFORD.—Final receipt?

A. It might have been that. I think I would know the paper if I seen it. It was a square paper.

By Mr. BICKFORD.—Something like that? (Mr. Bickford exhibits to the witness final receipt of the land office in an entry under the Stone and Timber Act.)

A. I think it was something like that. Yes, that is what I think it was. They had got my money in Wash-

(Testimony of Mrs. Emma Dildine.)

ington; a deed from the United States. Didn't I get a deed from them?

By Mr. BICKFORD.—A patent.

A. Well, that is what it was. About four days after I proved up. Mr. Catlin would know what it was that he brought up. I think it was a deed from the Government because they had so much business at the land office that day that I had to wait. Mr. Catlin was there. No, sir, I don't—there is a mistake here somewheres. That is, if the record shows that I signed the deed the same day I proved up; and the same day that Laura Roll proved up.

By Mr. MAYNARD.—The record shows that you conveyed to Mr. Cobban the very day you proved up.

By Mr. BICKFORD.—I want to take issue with counsel on the other side on his statement that the deed shows that it was executed on the same day as the witness proved up. It shows nothing of the kind, and in order that the records may be straight I want to read from the deed, which is as follows: "This indenture made and entered into the 7th day of October, in the year of our Lord one thousand eight hundred and ninety-nine" is the date of the deed. The acknowledgment is dated the 9th day of October, one thousand eight hundred and ninety-nine before Wallace P. Smith, notary public, and we suppose at this time that there being a discrepancy between the date of the deed and the date of the acknowledgment that probably the county clerk and recorder of Deer Lodge County have made a mistake in

(Testimony of Mrs. Emma Dildine.)

copying the deed, an error which we will endeavor to correct later on. And we object to the examination of the witness upon a paper which is manifestly an error as to the dates.

A. I know positively I never signed the deed. That is a mistake. I positively swear it is a mistake because I know.

Q. You said you got something from Washington?

A. Why, I think it was returns from Washington that I signed from Mr. Catlin. He done my business.

Q. And the returns from Washington you say came back within four days after you proved up?

A. Oh, I—let us see; I don't know, it might have been a receipt or something. I have filed but once, and I am sure I don't know what dates or how it goes.

Q. Well, what kind of a looking paper was it that you received from Washington?

A. I think it was a patent.

Q. It was a patent, you think?

A. I don't think that was, no. Well, it must have been. I got my patent after I proved up.

Q. Well, how long?

A. Well, I think it was a few days.

Q. In your best judgment, how many days?

A. Well, it might have been four days, somewhere along there.

Q. That you got your patent from Washington?

A. You see I didn't prove up when the rest did, and it might have been that I proved up four days later than

(Testimony of Mrs. Emma Dildine.)

they did. That is where I might have got the four days. I didn't prove up when Laura Roll and the Yargers did. There was so much business in the land office, and that is probably why I was four days later, so that is where I got mixed up I suppose. It has been three or four years since I done it, and I cannot tell exactly.

Q. Well, did you receive any paper from Washington about four days after you proved up, of any kind?

A. Yes, I signed—I got my patent I think a few days afterwards, four or five days or a week afterwards; I couldn't swear how many days after I got my patent.

Q. Did it come in an envelope?

A. Why, I think Mr. Catlin brought it up to me.

Q. Now, then, I hold in my hand the patent that you received, or a certified copy thereof, which has been admitted in evidence, and the patent did not issue from Washington until the following month, or rather, more than six months.

By Mr. BICKFORD.—We object to the argumentative manner of counsel, and move to strike the statement of counsel from the record.

A. It must have been a receipt I signed then.

Friday, March 7, 1902, 2 P. M.

The witness, Mrs. EMMA DILDINE, was called for further examination and testified as follows:

By the WITNESS.—I would like to correct that about the mistake in the patent or deed. Well, that is about all I just wanted to say if it was the patent or deed or receipt or whatever it was, it could not have been the deed, could it?

By the EXAMINER.—It could not have been the patent, you mean?

By the WITNESS.—It must have been the receipt, it could not have been the patent, but one not knowing the rules of that kind of business I got it mixed.

Direct Examination.

(By Mr. MAYNARD—Continued.)

Q. Since we adjourned for dinner you have determined to make this correction, have you?

A. Well, I seen through it before I left the office, I seen where the mistake came in.

Q. Who have you talked with since that?

A. Nobody but Mr. Yarger.

Q. Haven't talked with either of your counsel?

A. Nobody but Mr. Yarger; I seen the mistake before I left here.

Q. Do you know what it is now?

A. I think it was the receipt.

Q. You don't know that, do you?

A. Not positively, but I think it must have been the receipt.

(Testimony of Mrs. Emma Dildine.)

Q. How long did you say you had lived in Missoula?

A. I think it is either 13 or 14 years last November, that I have lived in Missoula, but not all the time, we were sent to Great Falls.

Q. Did you during that time live up in the Blackfoot country? A. No, sir; never did.

Q. Never lived up there?

A. No, sir; just for this time.

Q. Who did you visit?

A. My mother—and sister in law.

Q. What is her name; your sister in law?

A. Jamieson's wife.

Q. How many times did you visit up there?

A. Twice.

Q. Now, what length of time?

A. Well, I think the first time I visited was when I went to look at the land, and the next time I think it was a year afterwards.

Q. A year after you looked at the land?

A. Well, I think it was, I think it was the next summer, I am not positive.

Q. Are those the two times you visited in the Blackfoot country in the 13 years?

A. Yes, sir. Since I gave this testimony I recollect I attended a party there.

Q. And your first visit to that country was when you went up to look at the land? A. Yes, sir.

Q. And the extent of your visit was as you have already testified?

(Testimony of Mrs. Emma Dildine.)

A. That is all the visits I have made up there.

Q. I mean the duration, what time it took to go up there, while you were there and come back?

A. Well, the first time I think it was either 8 days or a week.

Q. I am asking you about the first time?

A. Yes.

Q. This trip when you went up there to look at the land?

A. Yes, that was the first time.

Q. How long after you got up there was it before you saw Albert?

Mr. BICKFORD.—We object to that as irrelevant and immaterial.

A. I don't think he was there, I could not swear positively but I don't think he was there, I am not positive but I don't think I seen Albert while I was there.

Q. During your visit?

A. The first time I do not think I saw him there the first time I was up there.

Q. I never referred to your visit that took place the year after you located, I have no business with that and do not care anything about it, I am calling your attention solely to the one time you went up there, and that was the time you went up to locate this land?

A. I do not remember seeing Albert there, I don't think I seen him there, I am not positive.

Q. You know Mr. Griswold, don't you?

A. Yes, I did not at that time.

(Testimony of Mrs. Emma Dildine.)

Q. When did you form his acquaintance?

A. To-day was the first time I have ever spoken to Griswold in my life.

Q. To-day?

A. We were laughing about the mistake; he went up the street behind me going to dinner, and I think that was the first time I ever spoke to him.

Q. How many times have you ever seen him before that?

Mr. BICKFORD.—We object to that as irrelevant and immaterial.

A. I may have seen him a good many times, but I did not know him.

Q. Did you see him up there at the time you went up there to locate this land?

A. I don't think I did, because I was not in the camp; there were two different camps; I was only in the one camp, and he was not in our camp.

Q. Albert Jamieson is your brother, isn't he?

A. Yes, sir.

Q. While you were up there, didn't you inquire for him, as to where he was?

Mr. BICKFORD.—We object to that as irrelevant and immaterial.

A. I do not remember, I don't think I did.

Q. You are sure he wasn't there?

A. I don't remember, I cannot call to mind about seeing Albert, I was not at my mother's house you understand, I was at the camp only a little ways from the

(Testimony of Mrs. Emma Dildine.)

house, all that was in the camp with us was Mr. Yarger, his wife, my sister and Bill Eddy visited us while we were there and my mother, but I cannot call to mind of seeing Albert while I was there.

Q. In the mountains at all, on that trip?

A. Yes, sir; I cannot call it to mind now.

Q. Well, do you call to mind any of the facts and circumstances connected with your going out to locate your land?

A. Yes, I understand that I went out, I and my husband went out to look the land over, but Albert was not there.

Q. Nor Mr. Griswold was not with you?

A. No, sir; my brother described—a day or two before that we went over to Mr. Blanchard's and on the way from there, I think it was my mother with me, my brother described it to me, I think before I went up there, I am not sure how I found out, I cannot remember that, but I know where this land laid, and the road passes right by the other corner and up into the gulch; I know where the other part laid, my husband and I went up alone and drive over it, and then we got out and walked over the rest of the way, could not drive over it.

Q. Why?

A. It was too mountainous, just to a little point down in the gulch we drove with our horses and got out and walked over the big steep sidehill.

Q. You and your husband went there alone?

A. Yes, sir.

(Testimony of Mrs. Emma Dildine.)

Q. Your husband was a carpenter, a contractor in Missoula?

A. Yes, I guess he was contracting that summer.

Q. Well, when he does no contract what does he do?

A. Before that he was foreman for a contractor; now he is contracting for himself.

Q. I was asking you about that summer?

A. I said I thought he was contracting for himself then.

Q. He was a stranger to that country, wasn't he?

A. He had been up there once before.

Q. Just once before? A. Yes, sir.

Q. When?

A. It had been six or seven years before that.

Q. You had never been there?

A. No, sir, but a day or two before I went to look at the place I passed the place going to Blanchard's.

Q. Who went with you?

A. Well, I think my mother, sister in law, and my sister and myself.

Q. In that wild and rocky mountainous country that you had never been to before in your life, with these women, how did you know when you came to your location?

Mr. BICKFORD.—We object to the assumption of counsel that was a wild, rocky and rugged country, the witness not having testified it was that kind of a country.

A. The reason why I knew where this place was, my oldest brother owns a claim, his farm is up there; this place

(Testimony of Mrs. Emma Dildine.)

I took up was just over the hill in the first gulch, and so in going to Blanchard's it was pointed out to us that was the vacant place.

Q. Who pointed it out to you?

A. My mother, but we talked of several different places of taking, my brother Albert had been wanting my husband and me to take claims for years, but we did not want to be bothered with them.

Q. You were on your way to Blanchard's with these other women, and your mother pointed out the place?

A. Yes, that was vacant.

Q. And that is all the knowledge you had of the subject, what your mother told you?

A. That was vacant, yes.

Q. And then you and your husband went there afterwards? A. Yes, sir.

Q. How long afterwards?

A. I believe it was a day or two, I am not positive as to just the time, it was after that a few days.

Q. Nobody else with you except you and your husband?

Mr. BICKFORD.—We object to that as leading.

A. Not at that time.

Q. How long did you stay there?

A. Well, I didn't time myself, but I walked over quite a steep hill, down a gulch, perhaps was there two hours, maybe not so long; I think it was four miles from my mother's and it took us about half a day to go, it was just sundown when we got back.

Q. Will you be kind enough to state how it was possi-

(Testimony of Mrs. Emma Dildine.)

ble that you who had never been there and your husband, who had never been there, how it was possible for you to know what pieces you located, except just what your mother had said the day or two before, how did you know what the lines were?

Mr. BICKFORD.—We object because the witness has already answered the question now propounded by counsel fully.

Q. How could you tell what the points were to your 160 acres?

Mr. BICKFORD.—We object because the witness has already answered the question now propounded by counsel fully.

Q. Can you answer that? A. Yes.

Q. Well, answer it?

A. Well, Albert told me the location of the land, gave me a plat or gave me the number of it I do not know which, and told me what corner I would strike; the corner stone laid there; a tree was marked as the corner stone; I think the east corner, and told me the lay of the land; and after I had looked it over he gave me the numbers to it; he had a plat, but I think he gave me the number after I came home or came back to Missoula; I do not think I seen him up there. I went on to the land and looked it over then; I think he came down to the land office and got the numbers and gave them to me at my home, or up there; I don't know which, I could not tell; I know we had a plat of the land, but, he told us how the land laid, and

(Testimony of Mrs. Emma Dildine.)

which one was vacant. I think my husband had a plat, a copy or something like that.

Q. But you have testified that you did not see Albert at all on this trip?

A. I said I was not sure, he gave it to me after I came away; I don't think I saw him up there, but I think he gave me the numbers after I came back, and then I got them at my father's home; I cannot say where I got them, but I know I got the numbers of that vacant land.

Q. If he gave you the numbers of that vacant land after you returned to Missoula, how could that have enabled you to locate the points when you went up there to look at it? A. Well, he described it to me.

Q. Who described it to you? A. Albert.

Q. Yes, but you say you did not see Albert until after you went to Missoula?

A. He could have described it to me before I went, after I got home I think he told me of this land before I went up there; I don't think I saw Albert while I was there; he was away on business of some kind, working or something, and I think I seen him the next day after I got home.

Q. Well, if you saw him the next day after you got home, did he then give you the description?

A. Well, I think he did, or before I went up there, one or the other.

Q. Well, if he gave you descriptions after you returned home that could not have enabled you to make the location, could it?

(Testimony of Mrs. Emma Dildine.)

A. Well, the location was described to me there by my mother and father, they knew the location of the land.

Mr. MAYNARD.—Answer the question I put to you.

Mr. BICKFORD.—We submit the question has been answered, if your Honor please; the question has already been answered by the witness.

(By the EXAMINER.)

Q. Let her answer it.

Mr. MAYNARD.—What is your answer to that?

A. Well, I knew the location of the land when I saw it.

Q. So you can't answer the question I have just put to you?

Mr. BICKFORD.—We submit it has been answered.

A. I think that is an answer.

Q. On the contrary, if he gave you the description before you left home and you never had been up there in your life, and you did not go with anybody that knew anything about it, the bare figures on a piece of paper, the east half of the southeast quarter, and the southeast quarter of the southeast quarter, and the southeast quarter of the southwest quarter of section 12, township 14 north, of range 15 west, how were you enabled to locate anything?

A. Well, he told me the corner stone was the east corner of that piece of land, and I came to the corner stone of the land laid right into a gulch and on the sidehill, so I went up the sidehill and down the gulch.

Q. Now, in that mountainous country—

A. It is not so mountainous there.

(Testimony of Mrs. Emma Dildine.)

Q. Thought you said it was steep, mountainous country?

Mr. BICKFORD.—She never has testified to that.

Q. Was it a level plain or a hilly country?

A. It was a valley; my folks live in the valley up towards Blanchard's, and this place where my claim laid was in a gulch off of this valley; my brother's place was just this side from this little knoll, and my place was the only timber there.

Q. And the only stone there?

A. Stone everywhere.

Q. How did you know which stone it was was the corner stone, if there was stone everywhere?

A. The tree was marked.

Q. How many? A. Just one point.

Q. The tree was marked in one point?

A. It was the east corner.

Q. Then what could you do, and what did you do?

Mr. BICKFORD.—She has already testified; if your Honor please, we submit it is a mere repetition of the former question asked.

The EXAMINER.—Let her answer.

A. Well, he told me where the corners were.

Q. Who told you?

A. Albert, in order to get out into the other corner, by coming to the one corner and going to the other corner you could not help but pass over the place.

Q. When did Albert tell you that?

A. I think it was before I went out there; I had this

(Testimony of Mrs. Emma Dildine.)

land in view a long time before, but had never seen it until I made up my mind to take it up, and went up to look it over; I knew of its being vacant; I did not know the exact spot; spoke to me several times about my husband taking me up; we said we did not want to be bothered.

Q. I am asking you how you, who had never been there in your life before, came to identify this piece of land?

A. It was all the timber claim that was there in that lower end of the gulch.

Q. The only one?

A. Down at that place; miles above there was more.

Q. Wasn't there a timber claim immediately adjoining it?

A. No, not with any timber on it, not on the gulch; there was back up, north of mine.

Q. On the other side? A. On the other side.

Q. Just where the other side was, you don't know?

A. I went to the point where the east end was of the place.

Q. What was there?

A. Well, that was the corner; I was at the lower corner, and the upper corner came out on the gulch.

Q. You never were there before nor since?

A. I passed it before.

Q. I mean when you went with your mother?

A. No, I have not been there since; yes, I was there since; the last summer.

Q. I am not talking about what took place a year after?

(Testimony of Mrs. Emma Dildine.)

A. You asked me if I hadn't been there since.

Q. You say you never saw Mr. Griswold to know him until to-day?

A. Well, not positively; I said I had never spoken to him until to-day.

Q. Did you ever know him before to-day by sight?

A. I don't know as I could swear to that, to know him personally. I cannot see very good, and don't recognize a whole lot of people I really know.

Q. Albert wasn't there at all?

A. I can't call to mind of him being there.

Q. Under these circumstances, if that is true, how did it happen that the two witnesses that the law requires you to have for your locations were these two men, C. L. Griswold and Albert Jamieson?

Mr. BICKFORD.—We want to submit at this point to the Court that it is not necessary on the final proof upon a timber and stone claim that the witnesses should be acquainted with the occupant; the requirement of the law only being that they should know the land concerning which they testify.

The EXAMINER.—Well, she can answer the question.

A. I don't understand there is a question there.

The EXAMINER.—Well, there is a question there.

A. Did they have to go on the claim with me when I went?

The EXAMINER.—You can answer that, the only question is how they happened to be your witnesses.

A. Well, they knew the land and knew what kind of

(Testimony of Mrs. Emma Dildine.)

land it was, and knew that I had been on the land, and still they did not go with me.

Q. If you had never seen Mr. Griswold before, had no talk with him, and didn't know him until to-day, how could you have known he was up there in the neighborhood? A. When I was there?

Q. How did you know that?

A. They said he was there; I know he was at the lower camp; I think when we went to Blanchard's we drove over upon this land, and I think Albert was with us then.

Q. But you have stated several times that he was not there at all while you were up there in the mountains?

A. Not that day I looked at my place.

Q. What did you mean when you swore several times that you did not see him at all during all the time that you were up in the mountains?

A. Well, it must have been another time then.

Q. Do you remember the fact of this man being present at the time that you made your final proof?

A. Yes.

Q. Who? A. Well, Albert Jamieson was there.

Q. Well, your other witness was Mr. Griswold: do you remember of his being there?

A. Well, I guess he was; yes, I remember at the time.

Q. Remember at the time what?

A. That Griswold was there.

Q. How is it that you swore a few minutes ago that you never saw him before to-day?

A. To know him personally, I did not.

(Testimony of Mrs. Emma Dildine.)

Q. How did you happen to remember the fact that he was one of your witnesses on that day?

Mr. BICKFORD.—We submit the question is not fair and is made for the purpose of misleading the witness, and is misstating what the witness has testified to.

Q. Can you answer that question?

The EXAMINER.—The "he" referring to Griswold.

A. Well, he said he was my witness.

Q. Who do you mean by he?

A. I forget who my witnesses were, you said Griswold was my witness.

Q. The papers show it?

A. I do not know, I forget; I could not swear who my witnesses were unless I looked up the papers.

Q. Then you would only know by what the papers said, isn't that true?

A. Yes, I forget all about the claim, I have done so much business since then that I do not remember who my witnesses were, I would have to ask somebody that knew more about it than I did because I forget—then you said Griswold was my witness.

Q. How could they have been witnesses at all if you went there all by myself and they did not know anything about it?

A. They all knew I was going there.

Q. How did they know that?

A. They knew I was up there with that intention.

Q. How can you swear that they knew that?

(Testimony of Mrs. Emma Dildine.)

A. Well, they knew that I was up there for that purpose.

Mr. BICKFORD.—We object, if your Honor please; the witness has answered the question and is not compelled to give reasons for stating her testimony as she does state it.

Q. State your reasons for your swearing you knew Griswold knew you were up there for that purpose?

The EXAMINER.—You can answer.

A. Why, he was locating people, he was there with my brother as he said this morning, knew that I was up there to take a place, and I went up there to look at it, but during this time he was in several camps; Mr. Griswold was a stranger to me, I might have seen him and not known him with other men, he might have known me through my folks, but I was not personally acquainted with him any more than just hearsay.

Q. And you never had any talk with him at all in regard to the matter at any time previous to your final testimony nor before that day that you can remember?

A. Well, I might have talked to Mr. Griswold about taking up a claim in Cobban's office, but I forget it if I have, concerning him being my witness; me not seeing good, I forget one's face so quick; I do not remember them long, I could see you in Missoula and in a week from now would not recognize you at all.

Q. Well, then you went down after your visit to the mountain to Missoula again, with your mother?

(Testimony of Mrs. Emma Dildine.)

A. Yes.

Q. How long afterwards before you went to the land office?

A. Well, sir, I could not say, I suppose the same week.

Q. To make your statement, I mean?

A. To file.

Q. Do you know who went with you?

A. I went with Mrs. Yarger, Mrs. Roll and my mother.

Q. Where did you go first?

A. I just went right to Mr. Catlin's office and we filed.

Q. Had you seen Mr. Catlin before?

A. No; oh, I was acquainted with him.

Q. I mean in regard to this business? A. No.

Q. Nor Mr. Cobban? A. No.

Q. But you went right to Mr. Catlin's office—in Mr. Cobban's office, they are together; aren't they?

A. I don't know.

Q. Who told you to go to Mr. Catlin's office?

A. Because he done my business.

Q. Who told you to go there?

Mr. BICKFORD.—We object to that because it is assuming a state of facts which has not been shown, to wit, that somebody told the witness to go to the person spoken of.

A. I didn't want to go to anyone else, I thought that

(Testimony of Mrs. Emma Dildine.)

was his business, to go to him to file, that is the reason I went, I saw in the paper that people went there to make out their papers before him.

Q. You three women went alone to Mr. Catlin's office?

A. I think we did from my house, I think we went alone.

Q. Did you have papers with you containing a description of your location?

A. Yes, I had the numbers of the lots.

Q. Who gave them to you?

A. Well, I think Albert did, I don't know whether he gave me any paper or not; I think he left a plat in our house, and marked off this land that was vacant; whether he gave them to me or whether we took them ourselves off of this plat I do not know; I don't remember of Albert giving me any numbers.

Q. Five seconds ago you said he gave them to you, which do you wish to be understood as swearing to?

A. Well, I will swear then he gave them to me or I copied them in my house from the plat, but I don't just remember how I got the numbers.

Q. What were the numbers written on?

A. Really, I don't remember that part; I don't remember very much about it.

Q. Were you the spokeswoman for the crowd of women?

Mr. BICKFORD.—We object to that as irrelevant and immaterial.

(Testimony of Mrs. Emma Dildine.)

A. I think everyone done their own speaking, I did, I spoke to Mr. Catlin myself.

Q. You introduced yourself to him?

A. Well, I don't know.

Q. You say you never had any business with him before and didn't know him?

A. I went there in order to file; of course he knew what I was after.

Q. Why, "of course did he know what you were after"?

Mr. BICKFORD.—We object to that as calling for a conclusion of the witness and not for a fact.

A. I think I told him I wanted to take up a piece of land, and gave him the numbers.

Q. Well, what did he do?

A. Well, sir, he asked me questions; my age and all about where I was born, and I think a description of the land, I can't remember much about that.

Q. Did you give him this description which you say Albert gave you? A. Yes, the numbers.

Q. Why did he ask you about your age and where you were born?

Mr. BICKFORD.—We object to that because it is calling for a conclusion of the witness, and for the reason that it is not necessary for the witness to give; it is irrelevant and immaterial.

A. Well, I think he did.

Q. You won't swear that he did, will you?

(Testimony of Mrs. Emma Dildine.)

A. Yes, he did, I will swear that he did ask me my age and whether I was born in the United States.

Q. You now have in mind that this was the time when you went for the purpose of filing your statement, a day or two after you came down from the mountains?

Mr. BICKFORD.—Now, we object to all of the questions propounded to the witness heretofore by counsel; he has fixed the time as the time when final proof was made, and he has evidently for the purpose of confusing the witness changed the time to the time of filing.

Q. That is the time I am calling your attention to Mrs. Dildine?

A. Well, I think it was when I filed.

Q. Well, did he write this down in a paper?

A. I could not say whether it was in a paper or a big book he had, he did a lot of writing but I could not tell whether it was on a paper or a big book.

Q. Did you go over to the land office with the other women soon after you went into the office for the purpose of filing?

A. Yes, I think we went over to the land office.

Q. Did he go with you?

A. Yes, he went and showed us where the land office was.

Q. That is Mr. Catlin? A. Yes.

Q. Did you see Mr. Cobban?

A. I could not say whether he was there that day or not.

(Testimony of Mrs. Emma Dildine.)

Q. Well, if he was not there that day, you swear you never had any business with him before that day?

A. I done no business with Mr. Cobban at any time only when I sold him the land.

Q. Who filled out the blanks in this statement which you filed, Mrs. Dildine?

A. I am sure I could not tell.

Q. You don't know who did this writing?

A. I may have been there and seen him do it and not know just what paper he was writing on; not being accustomed to this kind of business, I would not remember; I would not know one paper from another.

Q. You don't know whether it was filled out in Mr. Cobban's office by Mr. Griswold or not?

A. No, you see I would not know what he was doing

Q. You saw him do a good deal of writing?

A. Yes, Mr. Catlin done the writing, there was nobody in the room but Mr. Catlin when we filed that I remember.

Q. He asked you what your age was?

A. Yes, and occupation.

Q. What your business was? A. Yes.

Q. Where you lived, etc.?

A. Yes, I think he did.

Q. You don't remember about anybody in the land office filling out any blanks or asking you any questions, do you?

A. Yes, there was a man there I believe he did a lot of writing, and questions.

(Testimony of Mrs. Emma Dildine.)

Q. I mean on the day that you filed?

A. I think that Mr. Hershey did some writing, and asked questions, there was lots of other gentlemen doing a lot of writing at the same time.

Q. You don't know anything about it do you?

A. I could not swear it was Mr. Hershey; it was a small man.

Q. There is Mr. Hershey right here (indicating)?

A. Well, it was not him; it was a gentleman there at Missoula, a small man, did the writing for us, asked us the questions and swore us.

Q. At the time for the filing?

A. I believe it was on the filing.

Q. You don't know whether that was at the time of the filing or later at the time you made your final proof?

A. No, sir, I cannot tell, I have got it mixed up; I have lived in Missoula a long time and heard lots of Mr. Hershey and I never knew that that was Mr. Hershey. It has been two years and a half and I have forgotten it, got it all mixed up.

Q. Well, you didn't have anything to do with naming your witness, did you?

Mr. BICKFORD.—We object to that as leading and suggestive.

A. I don't remember.

Q. You have no recollection of anything of that kind, have you?

(Testimony of Mrs. Emma Dildine.)

A. I think I have forgot about that.

Q. You know you have forgotten about it, don't you? A. I am sure I have.

Q. You have no recollection of doing anything in regard to your entry from the time that you made your filing until you made your final proof, have you?

Mr. BICKFORD.—We object to that as being irrelevant and immaterial.

A. No, I don't know anything about the business after I filed until I proved up.

Q. Well, on the day that you proved up, on the 7th of October, did you then see Mr. Cobban?

A. I don't remember, Mr. Cobban was a stranger to me then.

Q. I mean that was the day you proved up?

A. I don't remember of seeing him then.

Q. You have no recollection of having seen him before that time? A. No, sir.

Q. Who do I understand helped you on this the day you proved up? A. Helped me?

Q. Helped you, yes? A. In what way?

Q. That took you to the land office, etc.?

A. I knew where it was.

Q. Who did you go with?

A. Mrs. Roll and Mrs. Yarger and my mother.

Q. Had you been to Mr. Cobban's office before you went to the land office to prove up, to make your final proof?

(Testimony of Mrs. Emma Dildine.)

A. No, sir, I had never been there; they told me what block he was in so then I knew.

Q. When was that? A. The day I filed.

Q. On the day you filed that you have already testified about, you were not there after that at all?

A. Not until I proved up—I do not remember.

Q. Were you there on the day that you proved up?

A. Well, I could not swear to it, I don't know whether it was the land office or Mr. Cobban's office.

Q. Do you know anything about who paid the money into the land office for you?

A. I paid it myself.

Q. Who did you get the money from?

A. I borrowed it.

Q. Who from? A. Mr. Bond.

Q. Mr. Pond?

Mr. BICKFORD.—She said Bond.

Q. Do you mean Pond or Bond?

A. I don't know whether it is Pond or Bond or Pound, but I always called him Bond, I could not say.

Q. Mr. P-o-u-n-d is the man, he works for Mr. Cobban, doesn't he?

Mr. BICKFORD.—We object to the statement of counsel and move to strike it out as it is an evident effort upon the part of the counsel to lead the witness to testify according to his own statement.

A. I don't know.

(Testimony of Mrs. Emma Dildine.)

Q. Do you know who this man was that you got the money from?

A. I heard he was loaning money.

Q. Had you seen him the day before you went to file?

A. Well, I had seen him around Missoula a great many times.

Q. Had you seen him in connection with this business before you went to file, to make your final proofs, I mean?

A. I could not say whether I had seen him before or not.

Q. Had you had any talk with him until the day of the final proofs in regard to getting this money?

A. No, I don't think I had.

Q. Well, was it on this day?

A. I think it was the day that I proved up, that I borrowed some money of him.

Q. But you never have had any talk with him before on this subject? A. Well, I don't remember.

Q. Where did you see him? A. In the office.

Q. What office?

A. The office he works in.

Q. What office is that?

A. I guess it was Mr. Catlin's office.

Q. You know it was Mr. Catlin's office, don't you?

A. Well, there was two rooms together.

Q. Well, in those rooms there? A. Yes.

Q. Were the other women with you?

(Testimony of Mrs. Emma Dildine.)

A. I don't remember.

Q. You don't remember whether they were with you or not? A. Well, I believe they were.

Q. Now, as I understand you, on the day that you were to prove up you went to Mr. Catlin's office and saw Mr. Pound? A. Yes.

Q. And got the money from him?

A. Yes, I borrowed it off him.

Q. How much did you borrow?

A. Well, it was between four and five hundred dollars, I cannot possibly say the exact number.

Q. Did the other women borrow their money, too?

A. I could not say.

Q. And you don't know how much you borrowed from him?

A. It was between four and five hundred dollars.

Q. Is that as near as you can state?

A. Yes, between four and five hundred dollars.

Q. Now, then, you went to the land office?

A. Yes.

Q. Did he go with you? A. No, I went alone.

Q. The other women were not with you?

A. Yes, they went, too; I think, but whether we went right together or not I don't remember.

Q. If you had never done any business with Mr. Pound before, how did he know who you were?

Mr. BICKFORD.—We object to that because he is calling for a conclusion of the witness and not for a statement of fact.

(Testimony of Mrs. Emma Dildine.)

A. I don't know, he might know me.

Q. Did you see Mr. Catlin there?

A. I could not say whether he was in the room at the time or not.

Q. How did you happen to go to Mr. Pound rather than to Mr. Catlin who had done the business for you before this? A. I don't know.

Q. How long a time were you in this office?

A. Well, I could not say.

Q. Where did you go when you left the land office?

A. The time I proved up you mean?

Q. Yes.

A. Went directly there from Catlin's office.

Q. To the land office? A. Yes.

Q. You say you went alone?

A. Well, I think not; I think the other women were with me or close by.

Q. They were with you when you went in Pound's office?

A. I forget whether they were in the office at the time when I was in there or not.

Q. Did you see them receive any money from Mr. Pound? A. I don't remember.

Q. You don't know whether they did or not?

A. Well, I forget.

Q. Now, did Mr. Pound give you the money in a check or in currency? A. Bills.

Q. But you cannot tell just how much it was?

A. Not the exact number; it may have been four

(Testimony of Mrs. Emma Dildine.)

hundred and twenty-five dollars or something along there, between four and five hundred dollars, I think; just enough to pay out on the land, and just how much that was I forget.

Q. And he gave you the money in bills?

A. Yes, and I signed a note for it, I borrowed it off him.

Q. He didn't go with you to the land office?

A. No.

Q. And he didn't pay the money into the land office?

A. No, I paid it myself.

Q. You are sure of that?

A. Yes, sir, positive, I think, Mr. Catlin—no, Mr. Catlin went when we proved up to show us the place, that is when we filed he went to show us the land office, but when we went to pay out I think we went alone, I think the other three women went when I did down to the land office.

Q. If they went with you down to the land office, they transacted the business while you were there, didn't they?

A. Well, I guess I was in the room while they were there, yes.

Q. Did you see any of the other three women that you went with, pay out any money?

A. Well, I think they did.

Q. Well, what makes you think so?

A. Well, I have forgot but I think they paid the same time I did.

Q. You won't say whether they did or not then?

(Testimony of Mrs. Emma Dildine.)

A. Well, I just think they did.

Q. That is all you know about it?

A. Yes, I could not swear positively how much they paid or anything about it, but I think their money was paid when I did; I think I went down a little ahead or a little behind them; I don't think we all went in a body.

Q. Will you swear that you saw them pay any money?

A. Yes, I will swear that I saw them pay some money.

Q. Into the land office?

A. Into the land office, but I could not swear how much because I never asked them.

Q. Did you see them count out some bills?

Mr. BICKFORD.—The question has already been answered we submit your Honor.

The EXAMINER.—Let her answer it.

A. I don't know whether they counted it or not.

Q. Could you say whether there was more than one bill or not?

A. Well, I forget, but I think they paid out when I did.

Q. Did you see Major Catlin come into the land office while you were there?

A. Into the land office when we were paying up?

Q. When you were proving up?

A. That is when we paid the money.

Q. Yes.

(Testimony of Mrs. Emma Dildine.)

A. No, he did not go down with us, I don't think he was in the office.

Q. Did he come down afterwards?

A. I don't remember.

Q. You don't know whether he did or not?

A. I could not swear to it, whether he did or whether he did not.

Q. Let me ask you if this is not true, that at that time and place, that when you went in there to make your final payment that none of you, none of you four women had any money at all?

A. Before we went in there?

Q. I mean when you went in there to give your final testimony with your witnesses and to make your final proof in the case, that none of you had the purchase price with you, and that Mr. Catlin came into the office and informed the officers that he would attend to that matter?

Mr. BICKFORD.—We object to the cross-examination of the counsel's own witness, and to his submitting to the witness a proposition directly opposite to what the testimony shows, given evidently for the purpose of confusing the witness.

A. I have an income of my own, I ain't so very poor. You mean the first time when we filed, or when we proved up?

Q. I have asked you distinctly, if you don't understand the question, let the reporter read it to you again.

(Testimony of Mrs. Emma Dildine.)

The EXAMINER.—I think you had better state when you mean?

Q. The final proofs, that is when you proved up, paid the money out?

A. I don't know what he said, or what he didn't. I don't know that he went in there when we went in to pay our money. I could not swear to it; I don't remember seeing him; I know he never went with us down to the office. I know that he never went with me when I went down with the money.

(Question repeated by the stenographer, as follows:)

Q. I mean when you went in there to give your final testimony with your witness and to make your final proof in the case, that none of you had the purchase price with you, and that Mr. Catlin came into the office and informed the officers that he would attend to that matter?

By the EXAMINER.—I direct you to put another question to the witness.

Mr. MAYNARD.—For what reason?

The EXAMINER.—Because the witness does not understand the question that is put and is ignorant of the legal terms used in proving up timber land claims and is thereby greatly confused in giving her testimony.

Mr. MAYNARD.—Supposing he reads the question, and let us find out what objection there is to it.

The EXAMINER.—My direction to you is to put another question, I have that authority anyway.

(Testimony of Mrs. Emma Dildine.)

Q. The question I desire to ask you is this, at the time that you went with these three women to prove up after the sixty days had expired, whether or not at that time and place, you don't remember that somebody, while you were in the office and about to leave with your three women, and after you had filled out the blank for your final testimony, that no money had been paid by any of you to pay for your land, and that Mr. Catlin came in and said that that was all right, that he would pay for the land or words to that effect?

A. Pay for the land?

Q. Yes?

A. Why, we paid for the land ourselves with my borrowed money.

Q. Well, I am asking you about that?

A. I don't remember seeing him, or know anything about his business; don't remember anything about that.

Q. You don't remember his saying anything like that?

A. No, sir, I don't remember such talk.

Q. You say "we" paid it ourselves? A. Yes.

Q. What do you mean by we?

A. I paid for my own, the other women had money and they made payments, I don't know how much and whether they paid the same as I did I don't know.

Q. You don't know what money they had?

A. No, sir, I could not swear to it.

Q. But you do swear that you got from this Mr. Pound between four and five hundred dollars?

(Testimony of Mrs. Emma Dildine.)

A. Yes.

Q. And that you took that money in currency to the land office and paid it in there? A. Yes, sir.

Q. Yourself?

A. Yes, sir, and I think the other women done the same.

Q. That neither Mr. Pound, nor Mr. Catlin, nor anyone from the office went with you?

A. No, sir, not that I know of. Never saw them there.

Q. How long was it after you paid this money before you went back to Catlin's office?

A. I don't think I went back there.

Q. You don't know whether you did or not, do you?

A. I don't remember going back there.

Q. You don't remember whether the other women did or not? A. I never heard of it.

Q. You don't know whether they did or not?

A. No.

Q. They didn't go back when you went?

A. I don't remember going back at all.

Q. Where were you when you sold this land to Cobban?

A. Oh, that was several days or a week afterwards that I sold it to Cobban.

Q. Then you did go back?

A. Yes, I did, I remember now, but I don't think I went to his office after I paid the money; I don't remember of going in.

(Testimony of Mrs. Emma Dildine.)

Q. You may have gone?

A. I don't remember I had any more business with him.

Q. How did it happen that your deed to Cobban was that same day?

A. Well, I think there is a mistake there.

Q. Can you give any explanation for that?

Mr. BICKFORD.—We object to that, the witness is not called upon to give any explanation concerning something she has testified she knows nothing about.

A. Why, I did not make the deed the same day.

Q. The same day it was dated?

A. Well, I don't know.

Mr. BICKFORD.—You are at liberty, if you have any explanation to make to say so.

A. No, I don't understand that.

Q. You had not said anything to the people in the office there which might authorize them to fill out a deed on the same day you went and got the money?

Mr. BICKFORD.—We object to the question for the reason there is no proof the deed was filled out on the day when the final proof was made.

Mr. MAYNARD.—The deed itself shows that it was on the 7th of October.

Mr. BICKFORD.—We understand the deed shows that, and it shows an acknowledgment on the 9th of October; there is no testimony before the Court at this time going to show that the deed is correctly dated, or

(Testimony of Mrs. Emma Dildine.)

that the transaction took place on the date when the deed was signed, or when the deed was acknowledged; we submit further that in dating instruments and in dating acknowledgments mistakes frequently occur.

Mr. MAYNARD.—This deed says, "This indenture made this 7th day of October, in the year of our Lord one thousand eight hundred and ninety-nine," which is the date of your deed to Cobban, and the acknowledgment is two days later on the 9th, before Wallace P. Smith.

Q. Now, can you give any reason why anybody should undertake to date a deed of your land to Cobban on the very day that you made your final proof and got this money? A. I don't know of any reason.

Q. Can't give any reason?

A. No, sir; it is a mistake.

Q. Isn't this the reason that when you got this money that you told them that you would convey to Cobban?

A. No, sir.

Mr. BICKFORD.—We object to the question and move to strike the answer out for the reason that it is irrelevant and immaterial and leading.

Q. And there was no understanding on your part, nor nothing had been said by anybody which would lead them to sit down and write out that deed and date it on the same day.

Mr. BICKFORD.—We object to the question for the reason that is it irrelevant and immaterial, and leading.

(Testimony of Mrs. Emma Dildine.)

Q. Do you so swear?

A. I don't know; only I think it is a mistake.

Q. But you admit that two days thereafter you did sell to Mr. Cobban?

Mr. BICKFORD.—We object to that as being not an admission made by the witness, and not according to the testimony she has heretofore given in the case.

The EXAMINER.—You can answer.

A. I think it was longer than that.

Q. Do you know Mr. Wallace Smith?

A. I know him when I see him. I know him in his office; but if I would meet him on the street with a hat on I would not know him.

Q. Well, then, Mr. Wallace Smith's certificate is as follows:

State of Montana,
County of Missoula. } ss.

On this 9th day of October, in the year one thousand eight hundred and ninety-nine, before me, Wallace P. Smith, a notary public in and for the county and state aforesaid, personally appeared George Dildine and Emma Dildine, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

In witness whereof I have hereunto set my hand and

(Testimony of Mrs. Emma Dildine.)

affixed my notarial seal the day and year first above written.

WALLACE P. SMITH,
Notary Public in and for Missoula County, Montana."

Mr. BICKFORD.—We object to the question, or the statement of counsel as made for the reason that it is immaterial; the statement of counsel asks no question of the witness to be answered by her; and for the reason that it is irrelevant and immaterial, and for the further reason that he seeks thereby to contradict the allegations in the bill of complaint filed in this case.

Q. Now, Mrs. Dildine, here is an officer that certifies in his official capacity on the 9th of October?

A. I do not contradict it.

Q. What have you to say as to whether or not in the light of that fact you appeared two days after the 7th of October, the day that you made your final proof—

Mr. BICKFORD.—We object, if your Honor please, because it is cross-examination of the gentleman's own witness, and because the witness is not called upon to explain an official act under the official hand and seal of an officer, when she knows nothing concerning it, and is not bound particularly thereby.

The EXAMINER.—What is your answer?

A. I acknowledge that; I think it was longer than two days.

Q. In the light of that, what have you to say as to whether or not you were mistaken?

(Testimony of Mrs. Emma Dildine.)

A. Well, I surely was mistaken.

Q. Now, on that day, when he certified that you appeared there and sold that land, you, as a matter of fact had sold it, hadn't you?

A. Yes, that day I sold it.

Q. Did you see Mr. Cobban on that day?

A. I saw him the day I sold to him.

Q. That is the day I refer to now?

A. Yes, I surely did.

Q. That was the first time in your life that you had ever seen him to have any business with him, wasn't it? A. I believe it was.

Q. Do you remember when and where it was?

A. I think it was the office that I filed in; I don't know whether it was the land office or his office.

Q. You mean where you went to have your filing papers made up? A. Yes.

Q. Who introduced you to him?

A. I don't know as anybody did.

Q. How long were you there?

A. I could not say.

Q. Well, if you sold the land to him, how much money did you receive from him?

A. Well, I forgot.

Q. What do you mean, Mrs. Dildine; do you mean to say you sold your land to Mr. Cobban, and don't know how much you got?

Mr. BICKFORD.—That is what she said; we submit to the Court.

(Testimony of Mrs. Emma Dildine.)

A. I think it is on the deed how much I got; I just forget; I have sold several pieces of land in the last four or five years, and bought several pieces; we sold a farm in the Bitterroot valley, and I could not swear positively how much I got for it.

Q. As a matter of fact, at that time and place did you receive any money from Mr. Cobban?

A. Yes, when I sold him he paid me some money; gave me a check, I think it was.

Q. You think he gave you a check?

A. He gave me a check.

Q. He did give you a check? A. Yes.

Q. How much was it for?

Mr. BICKFORD.—We object to that because a check would be the best evidence of the fact sought to be proven.

The EXAMINER.—You can answer.

A. Well, I just forget; I cash a dozen checks every week; that has been a long time ago.

Q. Do I understand you to now swear that you don't know how much that check called for?

A. I could not swear positively.

Q. Well, give us your best remembrance, your best knowledge on that subject.

A. That day I paid out a good many debts; I paid a good many bills that day, and done some business with the bank, and I get it all mixed up.

Q. And now you say that you sold this land under the circumstances as you have stated, to Mr. Cobban,

(Testimony of Mrs. Emma Dildine.)

and he gave you a check as you first described, as you have stated it, to Mr. Cobban and he gave you a check as the purchase price, and now you are unable to say what that check was for, or anything about it?

Mr. BICKFORD.—She hasn't said that; she said she could not say anything about it, but she has sworn she could not tell the amount of the check; we object to the question put to the witness as being a repetition of a question already propounded, and which has been answered by the witness before?

Q. What is your answer?

A. Well, I would have to guess at it.

Q. Have to guess at it?

A. Well, I will say it was between one and two hundred dollars; somewheres between that amount, it called for.

Cross-examination.

(By Mr. BICKFORD.)

Q. Is this the first land that you have ever made an entry on, Mrs. Dildine?

A. No; entered land before.

Q. Where was that land?

A. In the Bitterroot valley.

Q. What sort of an entry did you make of the land in the Bitterroot valley?

A. It was deeded to me.

Q. Did you and your husband ever make any other entry of land? A. Well, I think he has.

Q. Did you ever make a pre-emption entry?

(Testimony of Mrs. Emma Dildine.)

A. No.

Q. Now, as I understand you, before you made an entry of timber and stone land, you went to the Blackfoot country and looked at the land, examined it yourself? A. Yes, sir.

Q. Immediately after having done that, or shortly after having done that, you went to Missoula and went to the land office and made your filing on the land?

A. Yes, sir.

Q. It was when you made your filing upon the land you signed your name to a paper?

A. I guess I did.

Q. Could you tell the paper you at that time signed, by looking at it?

A. No, I could not tell, because I am not accustomed to such business?

Q. You understand, I suppose, that these different steps in the land office are designated, first, the filing on the land, and afterwards the final proof upon the land?

A. Yes.

Q. You understand that the filing upon the land is the first step? A. Yes.

Q. And the final proof is the last step taken with reference to it? A. Yes.

Q. Now, at the time when you went to the land office to make filing upon the land, you made what is called in the land office, a sworn statement? A. Yes.

Q. In that sworn statement you say, "I verily be-

(Testimony of Mrs. Emma Dildine.)

lieve that the land is not valuable for gold, silver, cinnabar, copper or coal? You said that? A. Yes.

Q. "That I have made no other application under said act"? That is true, was it? A. Yes.

Q. "That I do not apply to purchase the land above described on speculation, but in good faith, to appropriate it to my own exclusive use and benefit." That was true? A. Yes.

Q. "That I have not directly or indirectly made any agreement or contract in any way or manner with any person or persons whomsoever by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any other person except myself." That was true, was it?

A. Yes, sir.

Q. At the time when you made you filing upon the land, then you had made no agreement with anybody or any contract concerning this land, whatever.

A. No.

Q. As I understand you, you don't know what the steps were that were taken in the land office between the time when you filed this first paper, and the time when you again went to the land office and introduced your final proof; you don't know what was done in the meantime, do you, with reference to the land?

A. No, no more than to go there.

Q. The regular order of business?

A. The regular order of business, in filing and proving up, that is all I know.

(Testimony of Mrs. Emma Dildine.)

Q. Now, you understand, or did understand, I suppose, that it would be necessary for you to appear at the land office with witnesses to make your final proof?

A. Yes.

Q. You knew that these were witnesses who knew the character of the land that you were entering upon?

A. Yes.

Q. Now, the witnesses who did appear for you were C. L. Griswold and Albert Jemieson, were they?

A. I guess so.

Q. You don't know about that?

A. Well, I forget.

Q. Well, at the time when you went to the land office to make your final proof, the second time you went there, you know that people did appear for you as witnesses?

A. Yes, I know that I had my witnesses.

Q. You knew you had your witnesses there?

A. Yes.

Q. And also knew that the witnesses were asked certain questions concerning the land? A. Yes.

Q. And you knew that they answered them, and that the answers were taken down in writing, do you?

A. Yes.

Q. Well, you know that you were asked certain questions at the land office at the time when you made your final proof? A. Yes.

Q. You know that the answers which you have gave were taken down in writing? A. Yes.

(Testimony of Mrs. Emma Dildine.)

Q. You saw the people do that when you went into the land office, didn't you?

A. Yes, I seen them writing.

Q. They read these questions to you, didn't they?

A. Yes.

Q. Then after it had all been written down the paper was handed to you and you were called upon to sign the paper? A. I guess I did.

Q. Then after you had signed your name to the paper, didn't they ask you to swear to the paper?

A. Yes, I remember that.

Q. You remember their asking you to hold up your hand and swear to the answers you had given?

A. Yes, I remember that.

Q. Now, at the time when you went to the land office you were asked concerning what this land was chiefly valuable for? A. Yes, I remember that.

Q. You told them it was chiefly valuable for the timber contained thereon? A. Yes.

Q. That was true, wasn't it?

A. Yes, sir, that was true.

Q. You were asked concerning the fact of your being a citizen of the United States? A. Yes.

Q. And you said you were? A. Yes.

Q. You believed at that time, didn't you, that you were entitled to make a timber and stone entry, under the laws of the United States? A. Yes sir.

Q. Now, you were asked this question: "Have you sold or transferred your claim to this land since making

(Testimony of Mrs. Emma Dildine.)

your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner with any person whomsoever by which the title which you may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except yourself?" To which you answered, "None but myself"; that answer was true and correct, was it?

A. Yes.

Q. There was no contract in existence at that time?

A. Not that I know anything about.

Q. You would know if you had made a contract?

A. No one made any contract with me.

Q. You had made no agreement either directly or indirectly for the sale of this land? A. No.

Q. This question was asked you, "Do you make this entry in good faith for the appropriation of the land exclusively to your own use, and not for the use or benefit of any other person?" to which you answered, "To my own benefit, and I purchased the land with my own money." That was true, wasn't it, Mrs. Dildine? A. Yes.

Q. You didn't ask your husband for money to pay out with, but paid it out of your own money?

A. Yes.

Q. This question was asked you, "Has any other person than yourself, or has any firm, corporation or association any interest in the entry you are now making, or in the land or timber thereon?" To which you answered, "No." Was that correct? That question was asked you; was the answer true at that time, that no other person

(Testimony of Mrs. Emma Dildine.)

had any interest in it, that you were not making it for the benefit of any other person?

A. No, just for myself.

Q. Now, after you had answered these questions, and had given your testimony before the land office you then received, or shortly after that received from the land office, a final receipt, didn't you? A. Yes.

Q. Now, was that the paper that you referred to in your examination-in-chief which was afterwards given to you by John B. Catlin?

A. I think that was what was brought up to my house.

Q. I show you a final receipt and ask you if it was a paper something like this?

A. Yes, it was a square paper.

Q. Something like that? A. Yes.

Q. Do you know by whom it was signed?

A. By myself, I signed it.

Q. Wasn't it signed by the officers of the land office, the people who received the money? A. Yes.

Q. It was a receipt to you for the money that had been paid in? A. Yes.

Q. Now, before you sold the land, did you make any inquiries as to the value of timber land in the vicinity of the land that you had entered?

A. Well, I knew about the way—I knew about prices, as to the way they were.

Q. Now, before you sold the land did you make any inquiries as to the value of timber lands in the vicinity of the land that you had entered?

(Testimony of Mrs. Emma Dildine.)

A. Well, I don't know how to answer it.

Q. Did you ask anybody about the land up there, what it was worth?

A. No, I don't know as I did.

Q. Did you make an effort to sell the land?

A. Yes, I made an effort to sell it.

Q. Who did you make inquiries of?

A. Of McLeod.

Q. Who was he representing at that time?

A. The Blackfoot Milling Company.

Q. Did he say he wanted to buy any land?

A. He said he was not in that business.

Q. Did he tell you anything about what lands were worth in that vicinity, or what timber was worth there?

A. I believe he told me what they had been paying; he referred to Cobban and Dinsmore.

Q. Then you didn't get from him an offer for the land?

A. No.

Q. Now, then, as I understand it, it was before you went to the office of Cobban & Dinsmore and endeavored to sell the land to them? A. Yes.

Q. Did Cobban & Dinsmore make you an offer for this land when you went and asked them if they wanted to buy it?

A. Yes, they, I think, told me what they would give.

Q. Was this after the day when you had made your final proof? A. Yes.

Q. Now, about this deed arrangement, have you any

(Testimony of Mrs. Emma Dildine.)

distinct or certain recollection as to the date upon which you executed this deed?

A. Well, I think I signed the deed the day that paper was made out in Wallace P. Smith's place.

Q. Do you know whether he put into it that day, the correct date? A. No.

Q. Do you know whether Wallace P. Smith dated it the day you appeared in his office? A. No.

Q. You don't know, then, whether it was October 9th or later than that? A. No.

Q. You didn't see Mr. Smith insert the date, October 9th, in this paper, did you? A. No.

Q. You don't know whether the date mentioned here is the correct date or not?

A. Well, what date is the deed?

Q. The deed is made the 7th of October, or dated the 7th of October.

A. That was a mistake, that is the day I proved up; I had the deed the day I proved up.

Q. You think it was some days later than that?

A. Yes, I think it was; I think there was a mistake there.

Q. You say you never made a pre-emption entry and borrowed the money to make it with, I believe you stated a minute ago you never had made a pre-emption entry yourself? A. Before.

Q. Yes? A. No, not before.

Q. Did you find any difficulty in taking up this par-

(Testimony of Mrs. Emma Dildine.)

ticular tract of land that you had been spoken to about by your brother? A. No.

Q. And when you went to the land, you went there and looked over it carefully, did you, Mrs. Dildine?

A. Yes.

Q. I believe you stated in your examination-in-chief that you had had the idea for some time of making a timber and stone entry? A. Yes.

Q. How did that first happen to strike you?

A. Well, because we knew the land was there, was vacant.

Q. Was good timber land? A. Yes.

Q. Now, that you have determined in your mind the difference between the time when you made your sworn statement, or your first entry of the land, or the time, sixty days later or more when you made your final proof, I will ask you to state whether or not Mr. Catlin did any writing in the book or any papers at all when you went the first time?

A. The first time I went there, I think it was in a big book, and on papers, too.

Q. Where was the writing done at the time you went the second time, the time you made your final proof?

A. When I went to file he did this writing, but when I made my final proofs I don't think I went into Catlin's office.

Q. You went to the land office direct, did you?

A. Well, I could not say.

Q. Who made out the papers when you filed?

(Testimony of Mrs. Emma Dildine.)

A. Catlin did all my business.

Q. What was he doing then, was he land attorney, or something of that kind? A. Yes, I think he was.

Q. Now, that you have seen Mr. Hershey, do you still say it was Mr. Hershey who asked you the questions and did the writing, or was it somebody else?

A. No, that man wasn't there; I didn't see him.

Q. He wasn't the one who did the writing then, and asked the questions? A. No.

Q. You said, I believe, that you had an income of your own, Mrs. Dildine? A. Yes.

Q. You are not dependent, then, upon borroving money with which to get means to make these entries?

A. Well, I didn't have it then.

Q. Now, when you went to the land office, do you remember how much money you had—I mean when you went to the land office to make your final proof, do you remember how much money you had?

A. Well, I could not positively swear how much money I paid in, but whatever the customary price was.

Q. You paid whatever the customary price was, whatever the law requires?

A. Yes, I cannot say just how much that was now.

Q. You paid the money yourself? A. Myself.

Q. To whom did you pay it?

A. Well, sir, I could not swear to that, it was a man that stood behind the counter; there was a big book in front of him; I don't know whether he was red headed or black headed.

(Testimony of Mrs. Emma Dildine.)

Q. Can you tell whether he was one of the officers of the land office or not? A. Yes.

Q. It was in the land office the payment was made?

A. I don't think he gave me the receipt then.

Q. When did you get this receipt, if you remember?

A. Well, I think that must have been the receipt Mr. Catlin brought up a few days after I paid the money in.

Q. Where did he bring it to?

A. My house, because I went to call there to get it and did not; I was in a delicate condition then, and I do not remember everything.

Q. Then this receipt was brought to you at your house by Mr. Catlin? A. Yes.

Q. Was it later than that that you made the deed, after you had received the final receipt?

A. I think it must have been.

Q. Did you feel that you were under any obligations to sell this land to any particular person after you had made your final entry on it? A. No, sir.

Q. I believe you said you did not see Mr. Catlin or Mr. Pound at the land office at the time when you made your final proof?

A. No, I don't remember seeing them there.

Q. Nor you don't remember of going back to Catlin's office after the final proof had been made?

A. I don't think I did.

Q. I believe you said you signed a note for this money? A. Yes.

(Testimony of Mrs. Emma Dildine.)

Q. And you paid the note at the time when you sold the land? A. Yes.

EMMA DILDINE.

Subscribed and sworn to before me this eighth day of March, 1902.

HENRY N. BLAKE,
Examiner.

Thereupon further hearing was continued until Saturday, March 8th, 1902, at 10 A. M.

Saturday Morning, March eighth, 1902.

Hearing resumed pursuant to adjournment, at ten o'clock A. M.

THOMAS H. McCONNELL, a witness called by the complainant, being first duly sworn, by the Examiner, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. McConnell, can you hear me well?

Q. Well, I am a little hard of hearing.

Q. Very well, I will come a little nearer.

A. You will have to get pretty close to me for me to hear.

Q. Mr. McConnell, where do you live?

A. I live at Clearwater.

Q. How long have you lived there?

A. Four years—five years.

(Testimony of Thomas H. McConnell.)

Q. What is you business? A. Farming.

Q. Are you a married man? A. Yes, sir.

Q. Living there with your wife? A. Yes, sir.

Q. How much of a farm have you?

A. I have no farm. I have it rented.

By the EXAMINER.—Does he mean that he has got a farm that is rented, or he is renting a farm?

By Mr. MAYNARD.—He means he is renting a farm.

Q. You are renting a farm, are you?

A. Yes, sir.

Q. Do you own any real estate?

A. I own no real estate.

Q. What personal property have you?

A. Cows, horses, wagons and farming implements.

Q. And you have your tools that you use?

A. Yes, sir.

Q. How many horses?

A. Four head of horses.

Q. And how many head of cattle?

A. Ten head.

Q. Ten cows? A. Yes, sir.

Q. And four horses? A. Yes, sir.

Q. Anything else?

A. No, I believe that is all.

Q. And how long have you been farming there?

A. About five years.

Q. Where did you live before you went there?

A. I used to live up here in the Prickly Pear valley.

Q. How long did you live in the Prickly Pear valley?

(Testimony of Thomas H. McConnell.)

A. I lived two years over here.

Q. What did you do here? A. Farmed.

Q. Did you rent a farm there? A. Yes, sir.

Q. How many children have you?

A. I have five.

Q. How long did you live on that rented place?

A. Here?

Q. Yes, sir. A. Two years.

Q. Then where did you live before that?

A. I have lived in the Prickly Pear valley, that is, the little Prickly Pear.

Q. How long did you live in the Little Prickly Pear valley? A. I lived there three years.

Q. And rented a farm there? A. Yes, sir.

Q. It appears from this original statement which I hold in my hand that on the 11th of July, 1899, you filed a sworn statement under the Timber and Stone Land Act so-called at Helena? A. Yes, sir.

Q. Is that your signature? (Counsel hands witness original statement referred to in the preceding question.) A. Yes, sir.

Q. Do you remember the fact of your coming here to Helena? A. Yes, sir.

Q. The description of the land contained in this timber and stone land sworn statement as I read from it is as follows: "The north half of the northwest quarter, the southeast quarter of the northwest quarter, and the southwest quarter of the northeast quarter of section 24, township 14 north, of range 14 west."

(Testimony of Thomas H. McConnell.)

Now, Mr. McConnell, you have a recollection, have you not, of the circumstances, which led you to take up this claim? A. Yes, sir.

Q. Would you be willing to tell the man who writes it down there just all those facts and circumstances in your own way? A. Yes, sir.

Q. Now, just tell us—tell us, Mr. McConnell, about entering the land and who you first saw, from the beginning.

A. I went to Mr. Griswold and asked him if he knew of any claims that I could locate on and he told me he didn't know at that time. He asked me to go and see if I could find any and I went over about a mile and a half from where I was living, and then—we didn't find it that day, and the next day Mr. Griswold went with us. There was three of us altogether, Mr. Griswold and Mr. Sperry, and the next day we found the claim and then we went, I think it was the next day after, we started over here, to file on it.

Q. Who came over here to file on it?

A. Me, myself, and Mr. Sperry.

Q. Well, now just go on and tell the story from that time right straight through—all about it, please, until you sold to Mr. Cobban.

A. Well, I went back home, and inside of sixty days we came back and proved up on the land.

Q. Who came with you then?

A. Mr. Sperry and Mr. Griswold.

Q. Then what did you do?

(Testimony of Thomas H. McConnell.)

A. Went back over home, after we got through here.

Q. Well, go on, did you shortly afterwards sell this land that you took up to Mr. Cobban?

By Mr. BICKFORD.—We object to that for the reason that it is leading and irrelevant and immaterial to the issues in this case.

A. Did I what?

Q. Did you shortly after you made your final proof sell the land to Mr. Cobban?

Mr. BICKFORD.—We object to that for the reason that it is leading, and upon the further ground that it is immaterial and irrelevant to the issues in this case.

A. Yes, sir.

Q. And how much did you receive from Mr. Cobban?

A. I got a hundred and fifty dollars.

Q. Did he pay that to you himself? A. No, sir.

Q. Who did pay it to you?

A. There was a man by the name of Smith paid me the money.

Q. Who was this Mr. Smith?

A. I think he was a notary public of Missoula county.

Q. Did you at any time from the time that you filed until you sold to Mr. Cobban get any more than a hundred and fifty dollars?

A. No, I believe that was all.

Q. How far were you living from Mr. Griswold's house up in the Clearwater when you went to see him to ask him if he coudn't get a location for you?

(Testimony of Thomas H. McConnell.)

A. About a mile.

Q. How long was it before you came here to Helena?

A. Well, after we went over on to the land—we went one day and I think the next day we started for Helena.

Q. Who did you say came with you?

A. Mr. Sperry.

Q. That was Charles B. Sperry. A. Yes, sir.

Q. Mr. Griswold didn't come?

A. Not when we filed.

Q. You and Sperry came in what?

A. We came by wagon and team.

Q. From your home to Helena? A. Yes, sir.

Q. How much money did Mr. Griswold give you to pay for your expenses?

By Mr. BICKFORD.—We object to that as presupposing a statement as having been made by the witness that has not in fact been made to the witness, to the effect that Mr. Griswold had given him money to pay his expenses, and upon the further ground that it is leading.

A. He gave me fifteen dollars, I think it was.

Q. Do you know whether he gave Sperry any or not?

By Mr. BICKFORD.—We object to that for the reason that it is irrelevant and immaterial to the issues in this case and leading.

A. He gave Sperry some; but I don't know how much.

(Testimony of Thomas H. McConnell.)

Q. How long did it take you to make your proof?

A. I think that was three days.

Q. Coming? A. Yes, sir.

Q. And three days going back? A. Yes, sir.

Q. Can you now recall as to whether or not the money that Griswold gave you for expenses was enough to meet your expenses? A. It was not.

Q. How far did it fall short?

A. I think it was three dollars. I borrowed that here.

A. So that would be eighteen dollars then?

A. Yes, sir.

Q. When you came here, had anybody given you any paper to show the description of the land that you was to take up and the names of your witnesses?

By Mr. BICKFORD.—We object to that upon the ground that it is leading.

A. I don't recollect that there was. I don't remember any.

Q. Well, Mr. McConnell, after you and Mr. Sperry came here and located and went to the land office for the purpose of making the filing, and you had nobody to assist you after you got here, how did you know what your description was?

A. I believe now, too, that I got a lawyer here to fix up my filing papers.

Q. Do you know what his name was?

A. I do not.

Q. Had you ever seen him before?

(Testimony of Thomas H. McConnell.)

A. No, sir.

Q. Did you pay him any money? A. Yes, sir.

Q. How much? A. Three dollars.

Q. Was that the three dollars that you borrowed to pay him? A. Yes, sir.

Q. You don't know the man's name?

A. I don't. Mr. Sperry knew his name. He was acquainted with him, but I didn't know his name.

Q. But this lawyer that you went to—this lawyer that you went to didn't have the description of your land, did he? A. I think he did.

Q. Well, where would he get it from?

A. I don't know how he would get it.

Q. Well, now, I wish you would try and recollect, Mr. McConnell, if Mr. Griswold didn't give you the description when you came from the Clearwater?

A. I believe I do recollect. I gave it to the agent at the land office—the description, I recollect of giving him the papers.

Q. Do you recollect from whom you received?

A. This description? A. Yes.

Q. Yes.

A. I think it was from Mr. Griswold.

Q. And did this paper that you received from Mr. Griswold and that you gave to the agent in the land office contain anything else but the description of the land? A. I don't know.

Q. Did the paper Mr. Griswold gave you with this

(Testimony of Thomas H. McConnell.)

description on it, or whatever else there was on it—did you give it over to the agent? A. Yes, sir.

Q. Are you able to say as to whether or not Mr. Sperry did the same thing? A. I am not.

Q. Can you recall as to whether or not you saw him have a paper? A. Mr. Sperry?

Q. Yes, sir.

A. I didn't see him with any.

Q. After you went back home to the Clearwater after the filing, did you do anything, or have anything to do with the advertising, or seeing anything about that for the land?

By Mr. BICKFORD.—We object to that as immaterial and irrelevant, as it is the duty of the land offices to see to the advertising of the papers upon the final proof, and the rest of the papers in connection with such entry.

A. I believe not.

Q. Did you know at the time who your witnesses were to be? A. Yes, sir.

Q. Who were they?

A. Mr. Sperry and Mr. Griswold.

Q. Mr. Griswold had taken you and Mr. Sperry over to these descriptions? A. Yes, sir.

Q. How far was your description from your home?

A. It was about a mile and a half.

Q. And how far was Sperry's?

A. About the same distance.

(Testimony of Thomas H. **McConnell.**)

Q. When Mr. Griswold took you up to your land what did you do?

A. When he took me to the land?

Q. Yes?

A. Well, we looked over the claims, both of them.

Q. Your claim and Sperry's? A. Yes, sir.

Q. Was Mr. Griswold satisfied with the timber that was on the claim?

A. I believe so, he said so.

Q. Believe he was satisfied? A. Yes, sir.

Q. When he told you to go and hunt for it, had you found out this description yourself?

A. No, we hadn't got to the place at all. It was a rough country, and brushy and rocky, and we didn't get there, and we came back, and the next day we got Mr. Griswold to go in with us.

Q. Was that the first time that you saw the description that you took up? A. Yes, sir.

Q. That is, when Mr. Griswold went with you?

A. Yes, sir.

Q. Have you been there since?

A. On the claim?

Q. Yes? A. Yes, sir.

Q. Since you sold out, I mean?

A. Since I sold out?

Q. Yes.

A. I haven't been on it, but I have been close to it.

Q. For what purpose? A. Hunting.

Q. And while hunting you have walked near it?

(Testimony of Thomas H. **McConnell.**)

A. Yes, sir.

Q. Well, you had done that same thing before you took it up, hadn't you?

A. Yes, sir, I had been on the claim before I took it up.

Q. Not hunting? A. Yes, sir.

Q. But the only time you went for the purpose of taking this claim up was when Mr. Griswold took you there?

By Mr. BICKFORD.—We object to that for the reason that it is leading.

A. Yes, sir.

Q. And you were there about how long on your own claim? How long did Mr. Griswold stay there with you?

A. Well, we went up to take up both claims and it was all day before we got back.

Q. Well, when Mr. Griswold told you that was satisfactory he then gave you this paper, and you went to Helena?

By Mr. BICKFORD.—We object to that as being leading and upon the further ground that it is irrelevant and immaterial.

A. Yes, sir.

Q. Do you know, Mr. McConnell—did you know at the time, Mr. McConnell, from what he told you as to who he was working for?

By Mr. BICKFORD.—We object to that upon the

(Testimony of Thomas H. McConnell.)

ground that it is leading, and further for the reason that it is hearsay, and irrelevant and immaterial to the issues in this case.

A. No, sir, he did not.

Q. Well, you knew he was locating people for the timber that was on it?

By Mr. BICKFORD.—We object to that upon the ground that it is leading.

A. Yes, sir.

Q. You knew that? A. Yes, sir.

Q. Did you understand that he was to buy the timber himself?

By Mr. BICKFORD.—We object to that as not calling for a fact from the witness, but for the opinion of the witness, or a conclusion from the witness.

A. What is that?

Q. What is your answer to that?

A. Do I know—

Q. The question I asked you is, did you suppose at the time that Mr. Griswold was buying this timber for himself?

By Mr. BICKFORD.—We object to that as not calling for a fact from the witness, but for the opinion of the witness, or a conclusion from the witness.

A. No, sir, I didn't understand it that way.

Q. What did you understand?

A. I don't know who he was buying it for.

Q. Do you mean by that that you don't know the

(Testimony of Thomas H. McConnell.)

man's name that he was buying it for? A. Yes, sir.

Q. Do you mean that you understood that he was buying it for somebody?

A. Yes, I understood he was buying it for somebody. I asked him if he knew who was buying this timber, and he said he didn't.

Q. Did he tell you at the time that somebody would buy the timber?

By Mr. BICKFORD.—We object to that for the reason that it is leading.

A. No, sir, he didn't say that anybody would buy it.

Q. He did not? A. No, sir.

Q. Nothing said by him at all about it?

A. Not to me.

Q. Not to you? A. No, sir.

Q. As to whether or not, from what you had heard in the neighborhood you know that you could sell the timber?

By Mr. BICKFORD.—We object to that question for the reason that it is irrelevant and immaterial to the issues in this case, and upon the further ground that it calls for hearsay testimony, and is leading as well.

Q. What is your answer?

A. What was that question?

Q. The question was as to whether or not from what you had heard in the neighborhood you knew that you could sell that timber.

By Mr. BICKFORD.—We object to the question upon

(Testimony of Thomas H. McConnell.)

the ground that it is immaterial and irrelevant, and further that it is hearsay and is leading as well.

A. Yes, sir.

Q. And after you got—after you proved up, Mr. McConnell—after you proved up, state as to how much you were to get for the timber?

By Mr. BICKFORD.—We object to that as leading, and further that it presupposes a statement made by the witness, which has in fact not been made.

A. I was to get a hundred dollars for it.

Q. Was that to be over and above the expenses that you was to pay out?

By Mr. BICKFORD.—That is also objected to upon the ground that it is leading.

A. Yes, sir.

Q. Now, answer the question, please?

A. I say, yes, sir.

Q. As I understand you you did receive it?

By Mr. BICKFORD.—We object to that as leading, and assumes that the witness has made such a statement heretofore, when it is an assumption of counsel really, and not a fact testified to by the witness.

Q. I say, as a matter of fact you did receiwe it later?

A. Receive what?

Q. The hundred dollars and your expenses?

A. I received a hundred and fifty dollars.

Q. At the time you received the hundred and fifty dollars did you figure it up that the expenses that you

(Testimony of Thomas H. McConnell.)

had been put to in making the two trips that were made would make up the fifty dollars?

By Mr. BICKFORD.—We object to that for the reason that it is leading and assumes a state of facts which has not been testified to by the witness.

A. Yes, sir, it was part of the expenses.

Q. What?

A. It was part of the expenses.

Q. The fifty dollars? A. Yes, sir.

Q. You say that you were to get the hundred dollars clear over and above the expenses? Who told you that?

By Mr. BICKFORD.—That is objected to as being irrelevant and immaterial, and also hearsay.

Q. Mr. Griswold told you that, did he?

A. Yes, sir.

Q. When and where was it that Mr. Griswold told you that?

By Mr. BICKFORD.—We object to that for the reason that it is irrelevant and immaterial and hearsay.

A. At Clearwater.

Q. Was it before or after he went with you to look up this location? A. It was before.

Q. How long before? A. The day before.

Q. Now, please state just as near as you can, in your own way, just the conversation that was had between you and Mr. Griswold?

By Mr. BICKFORD.—We object to any conversation had between the witness and Mr. Griswold on the ground

(Testimony of Thomas H. McConnell.)

that it is hearsay and immaterial and does not prove or tend to prove any of the issues in this case.

Q. On this day before you went up with him to fix upon the location?

A. Well, I went to Mr. Griswold and asked him if he was locating on timber claims, and he said he was, and I asked him if he knew of any claims that I could file on. He said he didn't know of any, but if I would go just across the ridge about a mile, where we had looked he thought I could find a claim there. Myself and Mr. Sperry started over there the next day and we couldn't locate it, so Mr. Sperry went with us the next day.

Q. Mr. who?

A. Mr. Sperry and Mr. Griswold.

Q. Mr. Sperry and Mr. Griswold went with you the next day? A. Yes, sir.

Q. Both Mr. Griswold and Mr. Sperry?

A. Yes, and Mr. Sperry, too.

Q. But Sperry had gone the day before with you?

A. Yes, sir.

Q. Yes, but I asked you particularly to state as to the conversation that you had with him about what you was to do and about what you had to do in order to get this hundred dollars the day before you went to make the location?

By Mr. BICKFORD.—We object to this because he has already stated a conversation which he had with him in extenso.

(Testimony of Thomas H. McConnell.)

A I think Mr. Sperry did most of the talking with Mr. Griswold.

Q. Who were you to receive this hundred dollars from, Mr. McConnell?

A. Mr. Griswold, the way I understood it.

Q. He said that he would see that you got it?

By Mr. BICKFORD.—We object to that as leading, and as not being a statement made by the witness, but merely as assumption of counsel.

A. Yes, sir.

Q. You may state, Mr. McConnell, as to whether or not it was this conversation that you had with Mr. Griswold when he said that you could get a hundred dollars and your expenses, was that what led you to make this location?

By Mr. BICKFORD.—We object to that as leading, and upon the further ground that it is irrelevant and immaterial to the issues in this case.

A. Yes, sir.

Q. That was it? A. Yes, sir.

Q. When you came over after the expiration of the sixty days to make your final proof, did Mr. Griswold then come with you? A. Yes, sir.

Q. And Mr. Sperry?

A. Yes, and Mr. Sperry.

Q. This final proof was made on the 12th day of October, 1899? A. Yes, sir.

Q. And your witnesses were Griswold and Sperry?

A. Yes, sir.

(Testimony of Thomas H. McConnell.)

Q. And the receiver's receipt which I read is as follows: "Act of June 3d, 1878, No. 217. Form 4—131. Receiver's Office at Helena, Montana, October 12th, 1899. Received from Thomas H. McConnell of Deer Lodge, Montana, the sum of four hundred dollars and no cents, being in full for the north half of the northwest quarter, and the southeast quarter of the northwest quarter, and the southwest quarter of the northeast quarter of section 24, township 14 north, of range 14 west, Montana Meridian, containing 160 acres and no hundredths, at $2.50 per acre. John Horsky, Receiver, $400.00. $1.00 testimony fee received. Number of written words, 145. Rate per hundred words, 22-1/2 cents."

Q. Do you know who paid this $400.00 into the land office for you? A. Mr. Griswold.

Q. And if there was any money paid for testimony that price was paid for testimony and $10.00 for the sworn statement, who paid that in?

A. I don't know.

Q. You don't know who paid that in?

A. No, sir.

Q. When Mr. Griswold paid this $400.00 in for you to pay for the land, you paid for your land; did you know, at that time, whose money that was?

A. No, sir.

Q. He hadn't told you? A. No, sir.

Q. Had you up to this time seen Mr. Cobban?

A. No, sir.

Q. Or Mr. Catlin? A. No, sir.

(Testimony of Thomas H. McConnell.)

Q. This was on the 12th of October that this receipt of the money was made out by John Horsky, receiver?

A. Yes, sir.

Q. And as I now read from your deed to Mr. Cobban that was on the 20th day of October?

A. Yes, sir.

Q. Eight days after the money was paid into the land office? A. Eight days.

Q. Eight days. That was on the 12th, and this was on the 20th? A. Yes, sir.

Q. Where did you go after you left Helena?

A. I went home.

Q. With Sperry? A. Yes, sir.

Q. Did Griswold go home with you? A. No, sir.

Q. How did you go home this time?

A. Well, Mr. Griswold lived in Missoula at that time, and I think he did go home with us.

Q. Did you go home by car? A. Yes, sir.

Q. To Missoula? A. Yes, sir.

Q. When you were in the land office, did you receive any paper at all from the officers that you remember of?

By Mr. BICKFORD.—We object to that upon the ground that it is irrelevant and immaterial.

A. No, sir.

Q. After you left Helena you say you went home?

A. Yes, sir.

Q. And passed through Missoula?

A. Yes, sir, we had to go through Missoula.

(Testimony of Thomas H. McConnell.)

Q. Well, did you stop while you was in Missoula?

A. No, sir, I just stopped over night. It was late when I got in there.

Q. Then you came back to Missoula a few days afterwards? A. No, sir.

Q. You did not? A. No, sir.

Q. Where were you when you sold the land?

A. At home.

Q. Oh, at your home? A. Yes, sir.

Q. Up to this time when you sold the land you hadn't seen Mr. Cobban at all? A. No, sir.

Q. Nor Mr. Catlin? A. No, sir.

Q. Did someone come to your home?

A. Yes, sir.

Q. Who was this man?

A. His name was Mr. Smith.

Q. He was the notary?

A. Yes, sir, he was the notary.

Q. How long was this Mr. Smith—what is his name?

A. Smith.

Q. How long was he at your house?

A. He was there at Clearwater about two days, I think.

Q. Well, I mean how long was he at your house when you sold the land?

A. Oh, he was there, I guess, about two hours.

Q. What did he do there?

A. Why, he paid me the money to deed.

Q. He gave you a hundred and fifty dollars?

(Testimony of Thomas H. McConnell.)

A. Yes, sir.

Q. What was that in, in currency?

A. Yes, sir.

Q. Had you ever seen him before?

A. I hadn't.

Q. Was the deed that you signed, and your wife, was it drawn up before he came to the house?

By Mr. BICKFORD.—We object to that for the reason that it is irrelevant and immaterial, and does not prove or tend to prove any of the issues in this case.

Q. Did he come to your house?

A. What is that?

Q. Yes, sir, did he come to your house?

A. Yes, sir.

Q. Was the deed already drawn up before he got to your house?

A. Yes, all I had to do was to sign the deed.

Q. That was all you had to do? A. Yes, sir.

Q. And then you never saw Mr. Cobban or Mr. Catlin at all? A. No, sir.

Q. And this Mr. Smith, you hadn't seen him until he came to your house?

By Mr. BICKFORD.—We object to that for the reason that it is leading, and irrelevant and immaterial, and also a repetition of the testimony already given.

A. No, sir.

Q. You may state what took place at the house when Mr. Smith, the stranger that you afterwards found

(Testimony of Thomas H. McConnell.)

out was Mr. Smith, came to your house. What did he say to you?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial, and not tending to prove any of the issues in this case, and further that it is hearsay.

A. He said that Mr. Griswold sent him there to have us sign the deed and pay him for making the deed.

Q. Then what?

A. Well, I signed the deed and my wife, too.

Q. And he paid you the hundred and fifty dollars and went away? A. Yes, sir.

Q. Have you ever seen him since?

A. No, sir, I have not.

Q. You received then just exactly what Mr. Griswold told you he would pay you, Mr. McConnell?

By Mr. BICKFORD.—We object to that for the reason that it is leading and irrelevant and immaterial.

A. What is that?

Q When you got this money, you got what Mr. Griswold told you would before you went to locate the claim?

By Mr. BICKFORD.—We object to that for the reason that it is irrelevant and immaterial, and further that it is leading and calls for a conclusion of the witness and assumes a statement of fact that it not in the testimony, to wit, that he would receive a hundred dollars.

A. I received more.

(Testimony of Thomas H. McConnell.)

Q. You received more than Mr. Griswold said you would? A. Yes, sir.

Q. Can you account for that?

A. I thought it was for part of the expenses. That is the only way I could account for it.

Q. That what?

A. That it was part of the expenses.

Q. Well, you have told me before that the fifty dollars you estimated would cover the expenses?

A. Yes, sir.

Q. And that would leave you clear a hundred dollars?

A. Yes, sir.

Q. And that is what Mr. Griswold said you would get?

By Mr. BICKFORD.—We object to that as leading in the first place, and further that it calls for a conclusion from the witness; and the witness has already testified that Griswold never told him that he would pay him anything, and it is evidently an effort on the part of counsel to induce the witness to stultify himself by contradicting the statements relating to that matter already made.

By Mr. MAYNARD.—The claim of course is that the witness has already sworn that the day before he went up to locate the claim that Mr. Griswold had said that he would get a hundred dollars, and that he did get a hundred dollars, just as Mr. Griswold had told him he would get, and that the fifty dollars was the estimated cost and expenses that he had been to in the matter.

(Testimony of Thomas H. McConnell.)

By Mr. BICKFORD.—To which we reply that the testimony of the witness heretofore given to the effect that Mr. Griswold never told him how much he was to receive for the land, or made any arrangements about paying anything for the land but that the witness had heard in the community that he could get a hundred dollars for the land.

Q. Now, I will ask you again, Mr. McConnell, in the conversation that you had with Mr. Griswold when you went over to see him on this day that you and Sperry went up to look at this claim, whether or not Mr. Griswold hadn't told you that you could get a hundred dollards for it?

By Mr. BICKFORD.—We object to that for the reason that it is irrelevant and immaterial to any of the issues in this case, and further that it is hearsay.

A. I don't remember the conversation that we did have. We didn't talk very much about anything. In fact, Mr. Sperry did most of the talking with him.

Q. But that was the amount that you expected to get?

By Mr. BICKFORD.—We object to that for the reason that it is leading, and further that it is irrelevant and immaterial.

A. Yes, sir.

Q. And you expected to get that amount at the time you made the location of the land after you had proved up on it?

(Testimony of Thomas H. McConnell.)

By Mr. BICKFORD.—We object to that for the reason that it is leading, and further that it is irrelevant and immaterial.

A. Get a hundred dollars?

Q. Yes, sir.

A. I don't remember what it was—what the amount was that we were to get.

Q. Well, when did you first know that you was to be paid the hundred dollars over and above your expenses?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial and as presupposing that the witness expected to get something, when in fact he has not so testified.

Q. Mr. McConnell, did you hear my question?

A. No, sir.

Q. I say, when did you first know that you were going to get your hundred dollars for the sale of this timber over and above your expenses?

By Mr. BICKFORD.—That is objected to as being irrelevant and immaterial and not proving or tending to prove any of the issues in this case.

A. Why, before we went to look at the land.

Cross-examination.

(By Mr. BICKFORD.)

Q. It appears, Mr. McConnell, that you had been acquainted with this particular tract of land before you made entry on it under the Stone and Timber Act?

(Testimony of Thomas H. McConnell.)

A. I haven't been on the land before that, but I had been close to it—knew the location; that is, just about where it was, but I had never been on the land until the day when Mr. Griswold went with us.

Q. Well, now as a matter of fact, did you take Sperry to the land, or did Griswold take you to the land?

A. Well, I don't know how that would be. We tried to find it the day before and couldn't, and the next day we was all right together, and we went onto the land together.

Q. Now, you are sure that your trip to the land upon that day was to identify the land from the public survey of it? A. Yes, sir.

Q. And it was upon that day that you managed to definitely locate the land with reference to the public survey? A. Yes, sir.

Q. At the time when you went upon the land, did you examine it pretty thoroughly? A. Yes, sir.

Q. Did you at that time determine whether the land was more valuable for the timber than it was for agricultural purposes? A. Yes, sir.

Q. Which is it most valuable for?

A. More valuable for the timber on it.

Q. Has it any value as agricultural land?

A. Yes.

Q. Has it any value for agricultural land, Mr. McConnell? A. None at all, whatever.

Q. Then you would say that this land was properly

(Testimony of Thomas H. McConnell.)

a piece of land that could be entered under the Stone and Timber Act of the United States?

A. Yes, sir.

Q. Now, at the time when you went to the United States land office to make your final proof upon this land with Mr. Sperry, as you have testified you filed a sworn statement, didn't you? A. Yes, sir.

Q. Is this the sworn statement which I show you?

A. I think it is.

Q. It is signed, Thomas H. McConnell, is that your signature? A. Yes, sir.

Q. In this sworn statement you say as follows: "That it contains no mining or other improvements, nor as I verily believe any valuable deposits of gold, silver, cinnabar, copper or coal; that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith, to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons, whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That was true, was it not, Mr. McConnell at that time? A. Yes, sir.

Q. Now, speaking about the talk that you had with Mr. Griswold, did you ever at any time agree with Griswold that you would transfer the land to him or sell it to him? A. I don't think I did.

(Testimony of Thomas H. McConnell.)

Q. I will ask you to state whether or no there was anything said when you talked with Griswold about buying this land?

A. About his buying the land?

Q. Yes, about Griswold buying the land.

A. Well, it was understood that he was locating land for somebody else.

Q. Well, had he agreed to buy it? A. Yes.

Q. Who, Griswold had agreed to buy it?

A. No, I don't think he had.

Q. And you didn't agree to sell it to Griswold?

A. No, sir.

Q. Did you agree to sell it to anybody?

A. No, sir.

Q. You say you looked over both claims?

A. Yes, sir.

Q. Both yours and that of Mr. Sperry?

A. Mr. Sperry's? Yes, sir.

Q. Now, if Mr. Griswold upon his examination in this case swore that you swore falsely in making this preliminary or sworn statement here, was he telling the truth when he said that you swore falsely?

A. I don't think he was.

Q. Now, you said in your examination a moment ago that Griswold didn't say that anyone would buy this land of you, in your talk with him before you made your final proofs?

A. I don't really understand you.

Q. You said in your examination in chief a few mom-

(Testimony of Thomas H. McConnell.)

ents ago that Mr. Griswold didn't say that anyone would buy this land of you when you talked with him; was that correct? A. Yes, sir.

Q. Then all you knew concerning the selling of the land was the rumors that you had heard in the neighborhood? A. Yes, sir.

Q. That is right, is it? A. Yes, sir.

Q. Now, with reference to receiving the hundred and fifty dollars, had anybody ever agreed to pay you a hundred and fifty dollars before you made your final proof? A. No, sir; they had not.

Q. Nobody had agreed to pay you that money?

A. No, sir.

Q. You were asked the following question at the time you made your final proof: "Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure in whole or in part to any person except yourself?" To which you answered, "No, sir." A. Yes, sir.

Q. Now, was that true? A. Yes, sir.

Q. The following question was asked you: "Did you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?" A. Yes, sir.

Q. Was that true or not? A. It was true.

Q. You were also asked the following question:

(Testimony of Thomas H. McConnell.)

"Has any other person than yourself, or has any firm, corporation, or association any interest in the entry which you are now making, or in the land, or in the timber thereon?" To which you answered, "No, sir."

Q. Was that true? A. Yes, sir.

Q. That was true, was it? A. Yes, sir.

Q. As I understand you, you never had talked with Mr. Cobban or with Mr. Catlin prior to the time of your making final proof? A. No, I had not.

Q. Did you know them when you saw them?

A. I did not.

Q. Then your acquaintance with Mr. Cobban was subsequent to that time? A. Yes, sir.

Q. When did you first know Mr. Cobban?

A. I got acquainted with him here, the day before yesterday, I think. No, it was yesterday.

Q. You first got acquainted with Mr. Cobban on yesterday? A. Yes, sir.

Q. Never had known him before that time?.

A. Never had known him before that that I know of.

Q. And I believe I understood you to say a moment ago that Griswold never told you how much money he was to give you for this tract of land, or this piece of timber? A. How much money Mr. Griswold—

Q. He never said how much money he would give you for it? A. Yes, he did, too.

Q. When was that?

A. He said he would give me a hundred dollars when I made a deed.

(Testimony of Thomas H. McConnell.)

Q. That was when you had made your final proof?

A. Yes, sir.

Q. And that is all the talk you ever had with Griswold about it, wasn't it? A. Yes, sir.

Q. Did you ever try to sell this land to anybody else?

A. I did.

Q. To whom did you try to sell it?

A. To the Blackfoot Milling Company.

Q. When was that?

A. That was directly after I went home; after I proved up.

Q. After you had made your final proof?

A. Yes, sir.

Q. Who did you talk with concerning it?

A. I talked with a man by the name of Harrison about it.

Q. Who is this man Harrison?

A. Well, he is in the employ of the Blackfoot Milling Company.

Q. But you didn't succeed in selling it to Mr. Harrison or to the Blackfoot Milling Company?

A. No, sir.

Q. At the time you had made your final proof, you availed yourself of the opportunity and was at perfect liberty to sell it to any other person should you choose?

A. I thought so.

Q. You had no idea you were bound to sell it to anybody? A. No, sir

Q. With reference to this money that you got for

(Testimony of Thomas H. McConnell.)

expenses, in going to Helena, did you understand that to be a loan to you, Mr. McConnell?

A. Well, I thought so.

Q. You did think so? A. Yes, sir.

Q. And the money that was paid for the land, did you understand that to be a loan, too?

A. Yes, sir; I thought so.

By Mr. BICKFORD.—That is all, I think.

By Mr. MAYNARD.—Nothing further, Mr. McConnell.

T. H. McCONNELL.

Subscribed and sworn to before me this ninth day of March, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

CALVIN YARGER, a witness called by the complainant, after being first duly sworn by the Examiner, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

A. Are you a relative of the Jemisons, Mr. Yarger?

A. No, sir.

Q. Not by marriage, nor in any other way?

A. No, nor any other way. I am no relation to them in any shape or form that I know of.

Q. As I understand it, though, you are a friend of the family?

(Testimony of Calvin Yarger.)

A. Oh, on speaking terms with them, I think.

Q. You live near Victor, do you? A. Yes, sir.

Q. How far from Victor do you live?

A. Ten miles.

Q. Ten miles? A. Yes, sir.

Q. Have you a ranch, Mr. Yarger?

A. Yes, sir; a homestead.

Q. How old a man are you, Mr. Yarger?

A. Pretty old; I am 58; 58 years old next fall.

Q. Yes, you are pretty old. A. Yes, sir.

Q. How long have you lived up there?

A. Oh, I haven't lived there steady, but I went up there about ten years ago.

Q. Have you obtained title to your homestead yet?

A. No, sir.

Q. You have not? A. No, sir; I have not.

Q. How many more years have you got to live on it?

A. Well, sir, if my memory is correct, it about one year from to-day. That is my impression.

Q. You have lived there with your family then for some years? A. Yes, sir.

Q. And in a year you will be able to prove up on it?

A. Yes, sir.

Q. What other real estate have you, Mr. Yarger?

A. None.

Q. What personal property have you besides the tools and the stock that you need to run your place?

A. Well, I don't think there is any.

Q. Well, what does that property consist of?

(Testimony of Calvin Yarger.)

A. Horses and cattle.

Q. How many horses have you?

A. Well, I am interested in four head.

Q. Interested in four head?

A. Yes, sir, interested.

Q. Well, how many cattle have you got?

A. Fifteen head. I am interested in fifteen head.

Q. Well,when you say you are interested in fifteen head of cattle and interested in four head of horses, what do you mean by the word "interested"?

A. Why, I have got one-third interest in the stock.

Q. Who has the other two-thirds?

By Mr. BICKFORD.—To all of which we object, upon the ground that it is irrelevant and immaterial, and can have no bearing whatever upon the issues in this case.

A. My step-son.

Q. Your step-son, did you say?

A. Yes, sir.

Q. That is all you have? A. Yes, sir.

Q. You were living on this place at the time that you took up a claim under the Stone and Timber Act, were you not? A. Yes, sir.

Q. Well, now it appears here in evidence I think, that there is quite a settlement of Jemisons, and women that were Jemisons before they were marriel, living near you? A. Yes, sir.

Q. That is so, is it not, Mr. Yarger?

A. Yes, sir.

Q. And it was from information that you got from

(Testimony of Calvin Yarger.)

that family that led you and your wife to leave your home in Victor—ten miles from Victor—and go some seventy or eighty miles up into the mountains to look for this claim, was it not?

By Mr. BICKFORD.—That is objected to as being irrelevant and immaterial to the issues in this case, and upon the further ground that it is leading.

A. Well, it was rumored that way.

Q. It was rumored that way, was it?

A. Yes, sir.

Q. And you acted on this rumor? A. Yes, sir.

Q. Did you go up into the mountains with your wife?

A. Yes, sir.

Q. Did she make an entry at the same time that you did? A. She made an entry before I did.

Q. Before you did? A. Yes, sir.

Q. On the locations that you made when you went up into the mountains together? A. Yes, sir.

Q. How many trips did you and your wife make together? A. I made two.

Q. You made two up there, did you?

A. Yes, sir.

Q. How many did your wife make?

A. Made one with me, and whether she went up the second time or not I don't know.

Q. She started to go? A. Yes, sir.

Q. Well, the first time that you went you may state whether your wife had been up there before you went the first time?

(Testimony of Calvin Yarger.)

A. No, that was the first time she was ever up there.

Q. When? A. The first time I went up.

Q. When you both went up together?

A. Yes, sir.

Q. When was that, Mr. Yarger?

A. That was about the time, I think. I don't know, though, within a week.

Q. And who did you go up with?

A. My wife, Mrs. Roll and Mrs. Dildine.

Q. Mrs. Dildine is the woman that is now here in the room? A. Yes, sir.

Q. And that was sworn here yesterday?

A. Yes, sir.

Q. You heard her—you had the pleasure of hearing her testimony? A. Yes, sir.

Q. To get over the matter as rapidly as possible, I recall from her testimony that she went up in a team.

A. Yes, sir.

Q. Your wife and Mrs. Dildine and Mrs.—what is the other woman's name? A. Laura Roll.

Q. And her sister, Mrs. Roll? A. Yes, sir.

Q. Are you stopping at the same place with Mrs. Dildine now? A. Yes, sir.

Q. Now, when you and your wife went up in the way that you stated by team, up into the mountains, from home, did you return with her? A. Yes, sir.

Q. How long were you gone from home?

A. Well, I couldn't tell exactly the number of days.

Q. Did you start early in the week?

(Testimony of Calvin Yarger.)

A. I don't remember the day we started.

Q. Don't remember anything about that?

A. Not the day of the week or the month.

Q. Well, what is your best recollection as to the length of time that you was from your home on this first trip up there?

A. It must have been about sixteen days.

Q. Sixteen days?

A. Yes, as near as I can recollect.

Q. How many days did it take you to go up?

A. It took four days.

Q. Four days to go up there? A. Yes, sir.

Q. What did you do when night came during these four days? A. We camped out.

Q. Camped out when night overtook you?

A. Well, sometimes I would drive a little further in the dark.

Q. To get along? A. Yes, sir.

Q. It took you four days to come back, I suppose?

A. Yes, sir, four days to come back.

Q. You camped out coming back, did you?

A. Yes, sir.

Q. And the rest of the time you camped up in the mountains?

A. We camped up in the mountains, yes, sir.

Q. Had you ever lived up in these mountains before?

A. In the Blackfoot?

Q. Yes, sir? A. No, sir.

Q. Never been up there before?

(Testimony of Calvin Yarger.)

A. Yes, sir.

Q. Before this time, though? A. Yes, sir.

Q. When was that?

A. That was early in the nineties. I don't remember the year.

Q. Early in the nineties, what were you doing up there then, Mr. Yarger?

A. Looking for timber, looking over the country.

Q. How long were you up there then?

A. Now, we was gone three weeks from the time we left home until we got back. That is my best recollection about it.

Q. Where was you living then?

A. Up in the Bitterroot valley.

Q. In the same place?

A. No, we lived on a rented ranch then.

Q. So, some ten or twelve years ago you were up in the mountains about three weeks? A. Yes, sir.

Q. What did you say led you to go up there at that time? A. The first time?

Q. I am talking about that now, yes.

A. Why, went up there to look for timber, and see whether we could take up homesteads. We didn't take up homesteads, though, then.

Q. But you were looking to see whether you could take up a homestead or not? A. Yes, sir.

Q. And after you had been up there, as a result of that visit you took the homestead at this point in the Bitterroot?

(Testimony of Calvin Yarger.)

A. Well, I didn't find anything to suit us up there.

Q. That is what I say. A. Yes, sir.

Q. And that was the only time that you had ever been up in the mountains in your life until you made your visit with these ladies and your wife?

A. Yes, sir, up in the Blackfoot.

Q. Where did you live previous to homesteading this piece previous to the nineties?

A. Lived in Missoula and—

Q. Lived in Missoula? A. Yes, sir.

Q. What were you doing there?

A. Following the plastering business—hod-carrier.

Q. How many years were you engaged in that occupation? A. You have got me, I cannot tell.

Q. Well, what is your best recollection about that?

A. Oh, I guess I was about three or four years in Missoula—three years.

Q. And then where before that?

A. Well, I was in the Coeur d'Alene before that.

Q. What were you doing there?

A. Following mining some.

Q. Following mining? A. Yes, sir.

Q. What were you doing there?

A. I was placer mining.

Q. How long were you there?

A. From three to six months.

Q. And then, where before that?

A. All over the country.

(Testimony of Calvin Yarger.)

Q. All over the country; well, when you was all over the country, as you say, was you married?

A. Let us see, why I got married about fourteen years ago.

Q. You were a single man before that?

A. Yes, sir.

Q. Well, when you got up into the mountains and pitched your tents—

By Mr. BICKFORD.—He hasn't testified yet that they pitched tents. We object, if your Honor please, as not being a statement of the witness.

Q. Did you see Albert? A. I did.

Q. Had you ever seen him before? A. Yes, sir.

Q. You had seen him before and made his acquaintance? A. Yes, sir.

Q. How long before that?

A. Oh, it must have been three or four years, perhaps longer than that.

Q. Where was that when he was down visiting his relatives, in the Bitterroot. Is that so?

By Mr. BICKFORD.—We object to that as being a supposition of the counsel, and not a statement by the witness.

A. Yes, sir.

Q. Had you seen him a number of times down in the Bitterroot? A. Yes, sir.

Q. During those years? A. Yes, sir.

Q. But took you as a stranger, never having been

(Testimony of Calvin Yarger.)

there before, as you now say. Took you to this location that you made? A. Albert Jemison?

Q. Yes, sir. A. Yes, sir. He took us up there.

Q. Who were in the party then?

A. Albert Jemison and I were the only two. We were the only ones in the party.

Q. How long had you been in camp?

A. I don't know, must have been four days.

Q. Must have been four days that you had been in camp at the time he took you? A. Yes, sir.

Q. And just you two were alone together?

A. Yes, sir.

Q. How far was your—the place that he took you to, their camp?

A. Oh, it must have been between five and six miles as near as I can recollect. I don't know exactly.

Q. I am just asking you for your best recollection. How did you go, Mr. Yarger? A. Went afoot.

Q. Probably some twenty miles before you got back?

A. I should think so. If you had been there you would have thought it was forty.

Q. Why?

A. Because you would have got worn out before you got through climbing the hills.

Q. Climbing over the hills? A. Yes, sir.

Q. Was it a wild and woolly country?

A. I should remark.

Q. Different from the Bitterroot?

A. I should say so, too.

(Testimony of Calvin Yarger.)

Q. Well, when you got over this wild and rocky country that you say that you went over, how long did you stay there?

A. I stayed there until we got over the ground, it might have been four hours, I guess. We had to walk like the devil to get back. Excuse me, your Honor.

Q. To get back by night, you mean?

A. Yes, sir.

Q. Well, after you and Albert got through with this work as you have now testified to, when did you go back there again?

A. Didn't go back there at all.

Q. Didn't go back at all? A. Not after that.

Q. You never went there again? A. No, sir.

Q. Do you know who located Mrs. Yarger?

A. Well, I don't know.

Q. I just simply asked you if you knew. You didn't go that way?

A. No, sir, I was with Albert Jemison at the time he went up on the land.

Q. With who?

A. With Jemison when he was hunting up the claim.

Q. But you went with him? A. Yes, sir.

Q. When he was looking up the claims for the other people?

A. Yes, sir, I suppose he was locating them.

Q. Did you just go with Albert as company?

A. Yes, sir.

Q. And what did he do?

(Testimony of Calvin Yarger.)

A. We went to locate the lines in the corners, the quarter corners, and so on, and cut through the section and see how much timber there was on it.

Q. To see how much timber there was on it?

A. See the condition of the ground. See what condition it was in and whether it was rocky or smooth.

Q. Who was with Albert and yourself?

A. No one.

Q. How many claims had Albert located while you were with him that time? A. I don't know.

Q. How many would you say?

By Mr. BICKFORD.—He says he doesn't know. He has answered the question.

By Mr. MAYNARD.—Of course he don't know.

A. I don't know.

By Mr. BICKFORD.—Don't that answer your question?

By Mr. MAYNARD.—If he says he don't know, yes.

By Mr. BICKFORD.—Well, that answers the question, don't it? He says he doesn't know.

By Mr. MAYNARD.—If he meant no, but I was just asking him as to his best judgment. He was with Albert at the time and helped do this work.

By Mr. BICKFORD.—My objection to that is that it does not prove or tend to prove any issue in the case, and further that it is irrelevant and immaterial.

Q. Now, Calvin, won't you tell us, you say you was with him on this locating trip. While he was locating

(Testimony of Calvin Yarger.)

these other claims. You have some knowledge about that, haven't you, Mr. Yarger?

A. He located about four claims that I know of.

Q. He located four claims that you know of?

A. Yes, sir.

Q. Does that include your own? A. Yes, sir.

Q. Then there were three more that you know of besides that one that Albert located for you?

A. Why, one was for Mrs. Dildine and one for my wife.

Q. And one for Mrs. Roll? A. Yes, sir.

Q. And after Albert had done this work that you had gone along to do, do I understand you, that you didn't go with these women when they made their visits.

A. Yes, sir.

Q. You didn't go with them? A. No, sir.

Q. You didn't go with your wife? A. No, sir.

Q. So you have no personal knowledge of their going up to see these claims that Albert located?

A. No, sir, I have got no personal knowledge.

Q. What were you doing after they were away? Did you see them away? Did you see them in the camp?

A. Oh, they was away, but where they went I don't know.

Q. What were you doing?

A. When I was in camp I was pitching hay and doing some work around the camp a little bit.

Q. Then you went down back there again after you had had this experience up there? A. Yes, sir.

(Testimony of Calvin Yarger.)

Q. Now, do I understand that you say you went back into the mountains again that summer?

A. Yes, sir, I did.

Q. When was that?

A. Oh, it must have been a week after, I guess, something like that. I have forgotten how long it was.

Q. A week after you returned from the mountains?

A. I guess it was something like that.

Q. Did you go home? A. Yes, sir.

Q. Your wife went with you? A. Yes, sir.

Q. And then after you had been home a week you went back again? A. Yes, sir.

Q. Who went with you this time?

A. Thomas Roll, Mary Eddy, Herbert Eddy, and Mathilde Eddy. I think that is right.

Q. How did you go this time? A. By wagon.

Q. The same way as you went before?

A. The same way, yes, sir.

Q. Why did you go with these people to the mountains again? A. Why, I didn't locate the first time.

Q. Who didn't locate the first time?

A. I didn't, didn't take up a claim at that time.

At this point a recess was taken until two o'clock of the same day.

Saturday, March 8, 1902.

Hearing resumed.

CALVIN YARGER, being called for further examination, testified as follows:

Direct Examination (Continued).

(By Mr. MAYNARD.)

Q. Before luncheon we were talking about, or about to take up another trip to the mountains, do you recall that fact?

A. I don't know as I can, I have forgotten what the last question was.

Mr. BICKFORD.—Your last testimony was that you went back to the Blackfoot a week later.

Q. And you named the people that you went with?

A. Yes, sir.

Q. Your wife did not accompany you?

A. No, sir.

Q. Did she ever come back again?

A. Started back, started for that country afterwards.

Q. But you didn't go with her? A. No, sir.

Q. She did not go with you at this time?

A. No, sir.

Q. Now I asked you just before recess why it was that you returned again to the mountains a week after your coming down from the mountains?

A. Other parties wanted me to go up with them.

Q. What was the party?

(Testimony of Calvin Yarger.)

A. Yes, there were five.

Q. Was it you team that you took them up with?

A. No, sir.

Q. Did you hire a team? A. No, sir.

Q. Who did? A. No one.

Q. Whose team was it? A. Tom Roll's.

Q. Why did they want you to go?

A. Because they were not acquainted with the country up there, didn't know the road up there.

Q. How much did they pay you? A. Nothing.

Q. Not at all, not a cent? A. No, sir.

Q. How long were you gone?

A. I could not tell you.

Q. About the same length of time that you were gone before?

A. No, I was not gone that long this time.

Q. It took you four days to come down?

A. Yes.

Q. And four days to go back? A. Yes.

Q. Then the saving of time must have been when you were up in the mountains?

A. In the camp, didn't stay so long in camp.

Q. How long did you stay in camp, you were gone eight days in all, that is it took you eight days to go and come?

A. Must have stayed four or five days.

Q. And during that time these people that you took up there were located? A. Yes, sir.

Q. By Albert Jemison?

(Testimony of Calvin Yarger.)

Mr. BICKFORD.—We object to that as leading.

A. Albert Jemison looked over, selected.

Q. Just as he did before? A. Yes, sir.

Q. Did you go with him this time as you did before?

A. No.

Q. You stayed in camp?

A. Most of the time.

Q. Did you go out to your location again.

A. No, sir.

Q. So you stayed there until the other people had got their location from Albert, and then came back again? A. Yes, sir.

Q. And it was this time when you went down that you filed in the land office? A. Yes, sir.

Q. How many went with you; this same party that you took up?

Mr. BICKFORD.—He did not say he took a party up.

Q. Did they all come back with you?

A. They all came back with me.

Q. And did they file too? A. Yes, sir.

Q. Did Albert come down with you?

A. I don't remember.

Q. You don't remember whether he did or not?

A. I don't remember whether he did or not.

Q. Was he down there when you got there?

A. No, not that I know of.

Mr. MAYNARD.—I show the witness the original timber and stone land sworn statement, and show him the words "Calvin Yarger"?

(Testimony of Calvin Yarger.)

Q. Is that your signature?

A. That is my signature.

Q. That was on the 19th of August, 1899?

A. Yes.

Mr. MAYNARD.—In which Calvin Yarger of Victor, Ravalli County, Montana, desires to avail himself of the provisions of the act etc., privileges of the west half of the northeast quarter and the west half of the southeast quarter of section 28, township 15, north of range 16 west, in the district of lands, subject to sale at Missoula, Montana.

Mr. MAYNARD.—Now I show the witness the sworn statement of his wife, Sarah Yarger, and ask him if he recognizes that signature as his wife's signature?

Q. Is that her signature?

A. That is her signature, I think it is, to the best of my belief.

Q. And that signature is to the sworn statement which is dated July 31st, 1899, wherein she files an application for the purchase of the west half of the northwest quarter and the west half of the southwest quarter of section 12, township 14, north, of range 15 west, is the district of lands subject to sale at Missoula, Montana.

Q. And that was the 31st day of July, she filed this statement, and on the 19th day of August, you filed yours? A. Yes, sir.

Q. Now, when you filed your statement, who went with you to assist you, if anybody?

(Testimony of Calvin Yarger.)

A. John B. Catlin.

Q. Was he with your party?

A. Well, that is what I could not say, I don't know anything about what they done.

Q. He was with you? A. He was with me.

Q. Where did you start from when you started to go to the land office? A. His office.

Q. Had you ever seen or had any business with Mr. Catlin before this

A. Never had any business with him, but have been acquainted with him six, seven, eight or ten years.

Q. But had no business with him?

A. No business.

Q. Did you go alone to see Mr. Catlin?

A. I did.

Q. Did you know where the people were that you came down with?

A. Oh, they were around town there somewhere.

Q. Do you know whether they filed the same day or not? A. I guess the record shows that.

Q. Do you know yourself, independent of the records? A. They told me they had.

Q. Did you see them in the land office?

A. No, I don't remember as I did.

Q. This was before you filed, I mean, that is what I am now calling your attention to, so there will be no misunderstanding as to it?

Mr. BICKFORD.—He has answered the question.

(Testimony of Calvin Yarger.)

Q. Do you know who filled out the writing in that statement of yours? A. No, sir, I do not.

Q. You don't know whose handwriting that is?

A. No, sir.

A. No, sir.

Q. Did you see it filled out?

A. I think I was present.

Q. Whereabouts was it filled out?

A. Filled out in the land office, wasn't it?

Q. I am just asking you, I don't know.

A. I think it was filled out in the land office.

Q. Are you sure of that? A. That is my belief.

Q. You notice that the ink to the signature, your signature, Calvin Yarger, and the acknowledgment the 19th of August, 1899, Elmer E. Hershey, is entirely different from the other ink?

Mr. BICKFORD.—We object, the witness has not qualified himself as an expert in ink, and the paper in the hands of counsel has not been shown to anybody else for the purpose of detecting the difference in the inks, if there is any such difference; it is irrelevant and immaterial.

Mr. MAYNARD.—It is part of the files in the case and is open to you to see at any time that you want to.

Q. You can see yourself, Mr. Yarger?

A. I can see, but it may have been a change of pen.

Mr. BICKFORD.—There may have been other ink bottles in the land office, couldn't there?

(Testimony of Calvin Yarger.)

Q. You notice the difference in the color?

A. I notice a difference in the color.

Q. How did you happen to go to Mr. Catlin's office?

A. Why, he had been in the land office before and knew something about it.

Q. That is the first time that you saw him in regard to this business? A. That is the first time.

Q. Had you had any talk with Mr. Cobban?

A. No, sir.

Q. When did you have your first talk with Mr. Cobban?

Mr. BICKFORD.—We object to that because it assumes that the witness has had a talk with Mr. Cobban when as a matter of fact no such testimony has been given.

A. Don't know as I had any talk with Mr. Cobban until after I proved up and don't remember about it.

Q. Well, did you have any talk with Mr. Catlin, except on the day that you filed? A. No, sir.

Q. Before that time or since in regard to this business?

A. Before that time or since, never did have any conversation with him after I filed.

Q. And when did you have your first talk with Mr. Cobban? A. After I proved up.

Q. That was the first time? A. Yes, sir.

Q. And when did you have your talk with him after you proved up?

A. The same day I proved up.

(Testimony of Calvin Yarger.)

Q. Where? A. In his office.

Q. Well, did Mr. Catlin fill out this statement?

Mr. BICKFORD.—He has said so.

Q. He filled out the statement for you when you filed? A. Yes, sir.

Q. Where did he get the description from?

A. I handed it to him.

Q. Who gave it to you?

A. Why, his name has slipped my mind.

Q. Kilbourn? A. Kilbourn.

Q. Mr. Kilbourn gave it to you? A. Yes, sir.

Q. Did you meet Mr. Kilbourn when you were up in the mountains? A. Yes, sir.

Q. Who was he working for?

A. I never heard him say.

Q. Who did you understand he was working for?

Mr. BICKFORD.—We object to that as being hearsay, not relevant.

A. I don't know as he was working for anybody.

Q. What was he doing up there?

A. That was his business, it was not mine.

Q. Can you state how he happened to give you a description of this land?

A. He was over the land and looked at it.

Q. What land? A. That timber land.

Q. How do you know that?

A. He was over my quarter section.

Q. How do you know that?

A. He was one of my witnesses.

(Testimony of Calvin Yarger.)

Q. How do you know he was one of your witnesses?

A. Because he swore in the land office when I proved up.

Q. How did he happen to be one of your witnesses?

A. He was up there and was over the land.

Q. How do you know that?

A. I took his word for it.

Q. All the knowledge that you had, then, in regard to that is what he said?

A. And what he swore to at the land office.

Q. Who was your other witness?

A. Herbert Eddy.

Q. Is the same true with him as Kilbourn about your knowledge or his being on your land?

A. Repeat that question.

Q. Is it true with him as it was with Kilbourn that your knowledge of his being on your land was what he told you? A. Yes, sir.

Q. And what he swore to? A. Yes, sir.

Q. You have no knowledge of the fact of his being on your land, either of them, except as they told you they had been, and as they swore to at the land office?

A. That is all.

Q. Did you see this paper that Kilbourn gave you to give to Catlin? A. I did.

Q. Did you read it? A. I did.

Q. What was there on that piece of paper?

A. There was the numbers of the quarters in the section.

(Testimony of Calvin Yarger.)

Q. The names of the witnesses were on, too, were they not?

Mr. BICKFORD.—We object to that as leading.

A. Yes, sir.

Q. There were four, were they not?

A. Four witnesses.

Q. Why, were the other two?

Mr. BICKFORD.—We object to that as irrelevant and immaterial.

A. Albert Jameison was one but I foreget the other one.

Q. You remember these three on the paper that you handed to Catlin? A. Yes, sir.

Q. Who do you say the three names you remember were?

A. Albert Jameison and Kilbourn and Eddy.

Q. And the fourth one you don't know.

A. I have forgotten his name.

Q. The fourth one in the list here is Mary Eddy?

A. Yes, but I had forgotten it.

Q. And when Kilbourn gave you this paper with the names of these witnesses on it, who did he tell you to take the paper to?

A. I don't remember of his telling me to take it to anyone.

Q. You were directed by somebody to take this paper to Catlin, were you not?

Mr. BICKFORD.—We object to that as leading.

A. I was not directed by anybody?

(Testimony of Calvin Yarger.)

Q. You were not told to go there?

A. No, did not have to tell me.

Q. Well, what was the paper given to you for by Kilbourn? A. To locate my land finally.

Q. Now, do I understand you to say, on your own motion, without being told by Albert Jamieson or Kilbourn, to go to Cobban's office, that you went there on your own responsibility?

Mr. BICKFORD.—We object to this because the witness has not stated he went to Cobban's office; because the question is leading, and because it is irrelevant and immaterial, trying to make the witness testify to something which he has not testified to and misstating the testimony the witness has given.

A. I went to Catlin's office.

Q. Cobban's office and Catlin's office are one and the same place? A. I believe so, are they not?

Q. And you went to Catlin's office and saw him without anybody telling you to go there? A. Yes, sir.

Q. Did you know that your wife had gone there before? A. Yes, sir.

Q. She had gone there to have her papers made out?

A. Yes, sir.

Q. Is that the reason you went there?

A. Yes, sir.

Q. Do you know why she went there?

A. I supposed to get—

Q. Who told her to go there?

Mr. BICKFORD.—We object to that, a question is

(Testimony of Calvin Yarger.)

asked and the witness is not allowed to answer and another question propounded in the meantime; the witness should be allowed to answer the questions that are propounded to him.

A. I don't know.

Q. You don't know how she went there?

A. I know she walked there. Well, I can explain to you, we came to Missoula and stayed over night, and the next morning at 9 o'clock I walked down that way with her to the office and she walked in and I went on down town.

Q. You were with your wife when she went there to file? A. Yes, sir.

Q. And you had been up in the mountains with her?

A. Yes.

Q. What do you say as to whether or not, in your presence and in your hearing, something was said by which it was known she should go to Cobban's office or Catlin's office? A. There might have been.

Q. Well, who might have spoken or said something about it?

Mr. BICKFORD.—We object to this because it calls for a supposition and not for a fact, and the question is irrelevant and immaterial. A. I don't know.

Q. Did you get some money from Mr. Catlin at the time you filed? A. No, sir.

Q. Well, you made some arrangements with him, didn't you?

(Testimony of Calvin Yarger.)

Mr. BICKFORD.—We object to that as irrelevant, immaterial and leading. A. No, sir.

Q. You did not? A. No, sir.

Q. Nothing said about it?

A. Nothing said about it, no sir.

Q. Just state all that was done there at Catlin's office, when you went there at the time just before you filed?

A. Oh, I went into the office, and I asked him, I wanted to employ him for my attorney, I wanted to make a filing in the land office, and he said all right; I guess he filled out the papers and went with me down to the land office.

Q. Well, after you had filed this statement, as you have now stated, did you go home then? A. Yes.

Q. But you did not go back again to the mountains?

A. No, sir.

Q. Have you ever been there since? A. No.

Q. And when the sixty days had passed by, you went down again in Missoula? A. I did.

Q. Had you been to Missoula in the meantime?

A. I don't know—no.

Q. Did you go right to the land office?

A. When I went to prove up?

Q. Yes.

A. I think I went to see Mr. Catlin.

Q. You went to see Mr. Catlin first? A. Yes.

Q. And then after seeing Mr. Catlin, you went and proved up? A. Yes, sir.

(Testimony of Calvin Yarger.)

Q. Do you know how much money was paid into the land office? A. Yes, sir.

Q. How much? A. $411.50.

Q. Was that the price of the land?

A. That is what I paid into the land office myself.

Q. What did that represent?

A. Bills, good United States currency.

Q. Do you know what the $411.50 was to pay for?

A. The $11.50 was to pay the register fees; that is the way I understood it.

Q. The $11.50 was to pay the fees of the office, and the $400 was to pay?

A. The Government.

Q. And this $400 in bills you received from Major Catlin? A. I did not say I did.

Q. You say you saw Catlin a little while before you went to the land office? A. Yes, sir.

Q. And you received this money from him?

A. I did not say that.

Q. Who did you say you received it from?

A. Borrowed it from Mr. Cobban.

Q. You said you had never seen Mr. Cobban in your life before that day of going to him?

A. I didn't say so.

Q. What did you say?

A. I said I had never had any conversation with him.

Q. You never had any conversation in your life before with Mr. Cobban until this day you proved up and went to the land office?

(Testimony of Calvin Yarger.)

A. I might bid him the time of day.

Q. I meant except—

A. Except when I proved up.

Q. You were introduced to him by Mr. Catlin, were you? A. Yes, sir.

Q. After the introduction to Mr. Cobban by Mr. Catlin Mr. Cobban paid you $411.50.

A. I borrowed the money.

Q. He delivered the money over to you?

A. I borrowed the money off him and gave him my note.

Q. And then you went to the land office and paid this money in to the office? A. Yes, sir.

Q. And then how long a time after that was it that you sold this land to Mr. Cobban?

A. I think three or four days after I signed the note; I don't remember just exactly.

Q. Your wife Sarah was out home at this time?

A. She was.

Q. So it was necessary for her, as you understood it, to sign the deed, wasn't it? A. Yes, sir.

Q. The deed was sent up to your home, wasn't it?

A. I had the deed in my pocket.

Q. When you went home? A. Yes, sir.

Q. And who did you take this deed that you had in your pocket before, what magistrate or justice of the peace?

(Testimony of Calvin Yarger.)

Mr. BICKFORD.—We object to that because the deed itself is the best evidence?

A. Weisenflue.

Q. He is a justice of the peace for your township?

A. He was at that time.

Q. Did you and your wife go to his house?

A. Went to his office.

Q. Whereabouts? A. In the store.

Q. In Ravalli? A. In Victor.

Q. And acknowledged the deed?

A. Acknowledged the deed.

Q. Signed it and acknowledged it? A. Yes, sir.

Q. What did you do, did you give it to him, or did you send it back to Cobban yourself?

A. I sent it back to Cobban myself.

Q. How long after that before you saw Mr. Cobban?

A. I don't know how long.

Q. How long after you signed the deed?

A. I don't know how long.

Q. Had you been paid for this deed before you sent the deed down? A. No, sir.

Q. You did not receive your money for it until after you went down after it?

A. I did not go down for the money at all.

Q. How did you get it? A. Check.

Q. Check come to you through the mail?

A. Yes, sir.

Q. After you sent the deed down? A. Yes, sir.

Q. And how much was the check for?

(Testimony of Calvin Yarger.)

A. Seventy-five dollars.

Q. Had he paid you some money before?

A. Yes, sir, I borrowed some money from him.

Q. How much had you borrowed?

A. Twenty-five dollars.

Q. This $25.00 in money that you borrowed from him, what day did you borrow that from him?

A. Borrowed that the same day I proved up.

Q. Did you stay in Missoula for two or three days after you proved up? A. I did not.

Q. Did you come back home the same day?

A. No.

Q. When? A. The next day.

Mr. MAYNARD.—The certified copy of the deed of the witness to Cobban, which has been offered in evidence reads: "This indenture, made the 30th day of October, A. D. one thousand eight hundred and ninety-nine, between Calvin Yarger and Sarah Yarger, husband and wife, of Victor, Ravalli county, Montana, parties of the first part, and R. M. Cobban of Missoula county, Montana, parties of the second part, witnesseth," etc. That the said parties of the first part, for and in consideration of the sum of eight hundred dollars, convey the west half of the northeast quarter, and the west half of the southeast quarter of section 23, township 15 north, or range 16 west.

And on the same day, the 30th of October, the parties, from the certificate of the justice, personally appeared before him, the certificate reads as follows:

(Testimony of Calvin Yarger.)

"On this 30th day of October, 1899, before me, A. B. Weisenflue, a justice of the peace in and for said county of Ravalli, State of Montana, personally appeared Calvin Yarger and his wife, Sarah Yarger, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same."

Q. Now, the date of that deed and the acknowledgment of it appears to be the same, the 30th day of October.

A. Well, I certainly did not sign it on the 30th of October.

Q. Now, besides the $411.50 that was paid and the $25.00 in money and the $75.00 in check, didn't Cobban treat you as fairly as he did the others and allow you something for expenses?

Mr. BICKFORD.—We object to that because it is leading, because it calls for a conclusion of the witness, and for information that is manifestly not within his knowledge.

Q. Didn't you get anything for your expenses?

A. I believe I did.

Q. When was that, and how was that?

A. Got some money for expenses after I proved up.

Q. How much was that?

A. I don't know; it must have been—it was about $20.00, I guess, as near as I recollect.

Q. Who paid you that? A. Mr. Cobban.

(Testimony of Calvin Yarger.)

Q. Now, was that another item besides the $25.00 that you got from him? A. Yes, sir.

Q. So, as a matter of fact, then, you got $125.00, that is, you got your $100.00 and your $25.00 back that you paid out?

Mr. BICKFORD.—We object to that as calling for a conclusion of the witness.

Q. That is so, isn't it, Calvin?

A. I got $100.00, I believe, besides expenses.

Q. And he paid you that $25.00?

Mr. BICKFORD.—We object to the conclusion of counsel.

A. I took up my note for $25.00.

Q. You took up your note for $25.00?

A. Yes, sir, I borrowed that much of him and I had to pay it back.

Q. But that was not the $25.00 he gave you at the time you proved up? You said he loaned you $25.00 the day you proved up. A. Yes, sir.

Q. That was another $25.00?

A. That is the $25.00.

Q. Was that the $25.00?

A. Yes, sir; then he gave me $20.00 besides for expenses.

Q. Did you receive as much or less than your wife?

Mr. BICKFORD.—We object to that as irrelevant and immaterial.

A. Don't know what she received.

(Testimony of Calvin Yarger.)

Q. She never told you?

Mr. BICKFORD.—We object to that as irrelevant and immaterial.

A. I never asked her.

Q. Well, without your asking her, don't you know?

Mr. BICKFORD.—We object to that as irrelevant and immaterial.

A. No, I don't think I do.

Q. Were you living with your wife then?

A. Yes, sir.

Q. Have you lived with your wife since?

A. Yes, sir.

Q. Living with her now?

A. She is in California.

Q. She is California? A. Yes, sir.

Q. What is she doing there?

Mr. BICKFORD.—We object to that as irrelevant and immaterial.

A. She is living with her daughter there on a visit.

Q. Your daughter? A. Her daughter.

Q. Whereabouts? A. Santa Clara.

Q. When did she leave?

A. Four weeks ago last Wednesday.

Q. Were you living with her up to that time?

A. Yes, sir.

Q. You knew of her filing, didn't you?

A. Yes, sir.

Q. You knew of her making final proofs on her description? A. Yes, sir.

(Testimony of Calvin Yarger.)

Q. And about her selling to Cobban?

A. Yes, sir.

Q. You knew all that? A. Yes, sir.

Q. Now, do you swear on your oath here that, knowing all that, and having lived with her all the time, that you don't know what she received from Cobban for that land?

Mr. BICKFORD.—We now object because it is cross-examination of his own witness; the witness has already answered the question; and that it is done for the purpose of confusing the witness and endeavoring to make him admit a contrary state of facts from what he has sworn to.

A. I swear.

Q. She didn't tell you?

A. She didn't tell me.

Q. You never said anything to her about her deal with Cobban and how much she got?

A. Never said she did, I—

Q. I ask you, now, that question.

Mr. BICKFORD.—We object to it as being a question that has already been answered by the witness, and it is irrelevant and immaterial.

The EXAMINER.—What is your answer.

A. I don't know how much she got from Cobban.

Q. Nor you did not ask her?

A. Did not ask her.

Q. Never asked her? A. No, sir.

Q. Well, what was there about this deal, this sale

(Testimony of Calvin Yarger.)

of this land to Mr. Cobban by your wife to him that led you not to ask her as to how much she received?

Mr. BICKFORD.—We object to that as assuming that he has answered something which he has not answered; as being irrelevant and immaterial, and as being a question already answered by the witness.

A. I would not have got an answer, I would not have got an answer if I had asked her, to tell the truth.

Q. That is the reason that led you not to ask her, because you knew that if you did ask her, she would not answer you? A. That is right.

Q. And the matter was not talked of there at all in your family?

A. It may have been talked over; there was only two of us, though.

Q. Well, if it was talked over, was the question of the amount she received, or was to receive, from Cobban talked about?

A. Mr. BICKFORD.—We object to that as being irrelevant and immaterial, and as calling for a conversation between man and wife, and we now move to strike out all the testimony and the questions that were propounded by counsel with reference to conversation between man and wife, for the reason that it is not competent testimony to be aduced in the hearing.

Cross-examination.

(By Mr. BICKFORD.)

Q. At the time, Mr. Yarger, that you made your

(Testimony of Calvin Yarger.)

sworn statement in the land office being the first time that you appeared before the land office for the purpose of making entry of this land, you made a sworn statement in which you said "that the land that you sought to enter contained no mining or other improvements; you also said that you verily believed that it did not contain any valuable deposits of gold, silver, cinnabar, copper or coal"; you also stated "that I have made no other application under said act (meaning the Timber and Stone Act); that I do not apply to purchase the land above described on speculation but in good faith, to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner with any person or persons whomsoever, by which the title which I may acquire from the Government of the United States may inure, in whole or in part to the benefit of any person except myself." That was true at the time you made the statement, Mr. Yarger?

A. That was true.

Q. Now, going further along to the time when you had advertised for your final proof, you appeared at that time before the officers at the land office at Missoula?

A. Yes, sir.

Q. And you answered certain questions there?

Q. One of the questions was: "Have you sold or transferred your claim to this land since making your sworn statement, or have you, directly or indirectly, made any ageement or contract in any way or manner

(Testimony of Calvin Yarger.)

with any person whomsoever by which the title which you may acquire from the Government of the United States may inure, in whole or in part to the benefit of any person except yourself." Your answer was "No, sir"; that answer was true, wasn't it?

A. Yes, sir.

Q. The further question as asked you: "Do you make this entry in good faith for the appropriation of the land exclusively to your own use, and not for the use and benefit of any other person," you answered, "Yes, sir." That was true, wasn't it? A. Yes, sir.

Q. You were asked this question: "Has any other person than yourself, or has any firm, corporation or association, any interest in the entry you are now making, or in the land, or in the timber thereon?" Your answer is, "No, sir." Was that true? A. That was true.

Q. Then, as I understand it, you had gone on this land for the purpose of making this entry, in absolute good faith? A. Yes, sir.

Q. The land that you entered was examined by you, was it? A. Yes, sir.

Q. What was the land chiefly valuable for?

A. Timber.

Q. Did it have any value for agricultural purposes?

A. No, sir.

Q. What was the reason it was not valuable for agricultural purposes?

A. Rocky, rough, too rough. You could not get water on it.

(Testimony of Calvin Yarger.)

Q. Then it would not be good for agricultural purposes even if the timber was taken off?

A. No, sir.

Q. Was it valuable for any other purpose on earth except for the timber on it?

A. Not to my knowledge.

Q. You would not want to buy it for any other purpose? A. No, sir, starve to death on it.

Q. Do you know when it was that your wife went upon this timber claim? A. When she went up.

Q. Yes, when she went up to look it over, to her own? A. I could not tell the date.

Q. You were at the claim at the time when she left camp for the purpose of going on the claim?

A. I was not up there at all.

Q. Were not up there at all at that time?

A. No, sir.

Q. She went at the time when you went up the Blackfoot with her to look at the land?

A. She went up afterwards.

Q. She had looked at it before too, hadn't she?

A. No, I don't think she was.

Q. While she was up there in the Blackfoot country for the purpose of locating a timber claim?

A. Yes, sir.

Q. Was that before you went up or afterwards?

A. She went with me the first time I went up for the purpose of locating a claim.

(Testimony of Calvin Yarger.)

Q. Well, now, in her application for the land, in the record, she says in her testimony here, "When and in what manner was such inspection of the land made?" Answer, "On the 3d of September, 1899, inspection was made by walking over it on the 3d of September." Now, was that about the time she went up the Blackfoot for the purpose of locating the land there?

A. I think it was; I don't know, though; I am not able to state.

Q. Do you remember the date when she made her final proofs, or when she made her entry?

A. No.

Q. It appears from this paper that it was July 31, 1899—that she made the entry of the final proof on October 7th?

A. That is correct, as near as I can remember; I do not remember much about it.

Q. Are you generally acquainted with the land in the Blackfoot, or in only just that portion of it where you have made your entry?

A. Only in that portion of it.

Q. That portion of it which you entered is about all?

A. That is about the extent of it, though I am acquainted with some in 14, 15, and 16.

Q. As I understand you, the first talk you had about the sale of this land, was between the time when you executed the deed and shortly after you made final proof? A. Yes, sir.

(Testimony of Calvin Yarger.)

Q. You never talked with anybody about selling it before you made your final proof? A. No, sir.

Q. Never talked to anybody else besides Mr. Cobban about selling the land? A. Yes, sir.

Q. To whom did you talk? A. Dr. Parsons.

Q. Was Dr. Parsons buying timber land at that time? A. That was what was reported to me.

Q. You went to Dr. Parsons?

A. Yes, sir, after I proved up.

Q. But you did not make any bargain with him about it?

A. I asked him if he was buying land; he wanted to know where it was and I told him about where it was; he says, "I cannot do anything with it, it is too far over there; I don't have the time to go and examine it."

Q. And after you had made final proof you felt under no obligation to sell the land to any particular person? A. No, sir.

Redirect Examination.

(By Mr. MAYNARD.)

Q. Who is this Dr. Parsons?

A. One of the leading physicians of Missoula.

Q. In the city of Missoula? A. Yes, sir.

Q. What is his first name?

A. I don't know; all I know about him is Dr. Parsons.

Q. How long have you known him?

A. Well, I have known him since 1890.

(Testimony of Calvin Yarger.)

Q. He is a practicing physician in Missoula?

A. Yes, sir.

Q. Where was he when you went to him to see about buying this claim? A. He was in his office.

Q. When was it?

A. Directly after I proved up.

Q. The same day? A. Yes.

Q. Never had seen him before in regard to the matter? A. No, sir.

Q. Nor since? A. No, sir.

Q. Who did you go there with?

A. Nobody, went there by myself

Q. What did you say that you said to him?

A. I told him I understood he was buying land.

Q. Buying land where?

A. Well, I did not say where, I understood he was buying land, then he asked me where it was situated and I told him where it was situated, he says, "no, it is too far away, I have not got time to go and see it." something like that.

Q. Did you tell him what your claim was?

A. Yes, sir.

Q. And where it was? A. Yes, sir.

Q. And you wanted to know if he would buy it of you? A. Yes, sir.

Q. And he said "No"? A. Too far away.

Q. Does he know you? A. Yes, sir.

Q. Did you make any other effort to sell it?

A. No, sir.

CALVIN YARGER.

Subscribed and sworn to before me, this 9th day of March, 1902.

HENRY N. BLAKE,
Examiner.

Thereupon by agreement of the parties, it was ordered that the hearing be adjourned until next Wednesday, March 12th, 1902, at 10 A. M.

HENRY N. BLAKE,
Examiner.

Wednesday, March 12th, 1902, 10 A. M.

Mr. MAYNARD.—On page five of the printed bill of complaint, the name of William E. Lepley, of Fort Benton, Montana, appears; if he was subpoenaed by the Government I have no knowledge of how it was done, or by whose direction, or on whose orders. He is here at the present time; I do not desire to call him and did not subpoena him for the purpose of testifying at this time, and therefore he is excused.

Mr. BICKFORD.—I want to make an inquiry, if that may be allowed, to call Mr. Lepley for a few questions.

The EXAMINER.—By the consent of the parties the defendant then called the said William E. Lepley, who testified as follows:

WILLIAM E. LEPLEY, a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. BICKFORD.)

Q. You were subpoenaed, Mr. Lepley, to appear here? A. Yes, sir.

Q. At this time?

A. Yes, sir, that is, for yesterday.

Q. And is that a copy of the subpoena that was served on you? A. Yes, sir.

Q. Where do you live, Mr. Lepley?

A. My postoffice address is Fort Benton; I am out on our ranch, 30 miles southwest of Fort Benton.

Q. Are you the same person who made final proof in the United States land office for the tract of land described as the northeast quarter of the northeast quarter, and the south half of the northeast quarter of section 17, in township 21, north, of range 10 east?

A. Yes, I am positive; I have the numbers here that were given them at the land office; repeat the description.

Q. The land described is the northeast quarter of the northeast quarter and the south half of the northeast quarter of section 17, in township 21 north, of ten east. A. Yes, that is right.

Q. In what land office did you make your final proof? A. Right here in Helena.

Q. Under what law of the United States did you enter this land? A. Under the Timber and Stone Act.

(Testimony of William E. Lepley.)

Q. I will ask you to state whether or not you have ever sold that land to any person?

A. No, I have not.

Q. Are you still the owner of it? A. Yes, sir.

Cross-examination.

(By Mr. MAYNARD.)

Q. As I understand, you had previous to the time of making your application for this description, you never had had any conversation with any person in regard to what you would do with your land after you got it?

A. No, sir.

Q. Your brother took up the description which adjoins yours? A. Yes, sir.

Q. What is your brother's name?

A. Charles Lepley.

Q. And you wanted the land for the stone that was on it? A. Yes, sir.

Q. There was little or no timber on it?

A. There was very little timber on it, scrubby.

Q. And the description that you have read is the description of the land that you now own?

A. Yes, sir.

Q. And you paid for it with your own money?

A. Yes, sir.

Q. You had never heard of Mr. Cobban, had you?

A. No, I never had until yesterday.

Q. You didn't know then that he was buying up these claims? A. No, I did not; no, sir.

(Testimony of William E. Lepley.)

Q. Was yesterday the first time that you had ever heard of Mr. Cobban? A. Yes, sir.

Q. You were perfect stranger to him?

A. Yes, sir.

Q. You did not know the fact that the defendant in this case was buying up claims through Mr. Cobban or anybody else?

A. No, sir.

Q. And you bought this description solely for your own benefit? A. Yes, sir.

Q. And for no purpose of selling it to Mr. Cobban or to any other person?

A. No, sir, took it up for my own personal benefit.

Q. You came here from Fort Benton in obedience to a subpoena issued out of the court at the instance of the government? A. Yes, sir.

Q. When did you arrive in town?

A. Monday evening between 6 and 7.

Q. When did you first see Mr. Cobban, who was up to that time a perfect stranger to you?

A. Why, it was yesterday afternoon; he came to the hotel and left his card there, telling me to call at his place so I went up in the afternoon between 1 and 2.

Q. At what hotel did you stop?

A. The Helena.

Q. While registered there you received a card from this stranger, Mr. Cobban? A. Yes, sir.

Q. Have you that card with you? A. Yes, sir.

Q. Where is it? (Witness hands counsel card.)

(Testimony of William E. Lepley.)

Q. This is the card you received at the hotel?

A. Yes, sir.

Q. Did you see Mr. Cobban there?

A. No, I did not.

Q. Did you, after you received this card, go to this place? A. Yes, sir.

Q. Did you see him there? A. Yes, sir.

Mr. MAYNARD.—We offer this card in evidence. The card reads: (In lead pencil.) "Please call at room 7, 222 Broadway. To W. E. Lefley. R. M. Cobban, Timber Lands, Missoula, Montana."

(Card introduced in evidence and marked "Complainant's Exhibit No. 199.")

Q. And when you went to this room in obedience to this summons, you there saw him for the first time?

A. Yes, sir.

Q. You never heard of him before? A. No, sir.

Q. You were a perfect stranger to him?

A. Yes, sir.

Q. And he to you so far as you know?

A Yes, sir.

Q. For what purpose did he summon you there?

A. Why, he was telling me what they were bringing suit against him for, and also an extract from this pamphlet here, the complaint against him, and then asked me to go on the stand and testify that I had never met him before and never had any previous understanding in regard to disposing of land to him, or anyone else; that is the substance of what he wanted to tell me.

(Testimony of William E. Lepley.)

Q. Who was present at that conversation?

A. His wife, I believe; he introduced me to his wife.

Q. No one else? A. No one else.

Q. Did you see either of these gentlemen (indicating Mr. Bickford and Mr. Walsh) previous to coming on the stand? A. Why, I saw them here.

Q. This morning? A. Yes.

Q. Have any conversation with either of them?

A. No, not in particular.

Q. When did you have a conversation with them in general, or either of them?

A. At any time?

Q. You had no conversation with either of these gentlemen who represent Mr. Cobban, this morning?

A. No.

Q. When, yesterday?

A. No; I know this gentleman right here (indicating Mr. Bickford) said that Mr. Cobban or yourself, tried to make me believe I had sold some land to Mr. Cobban; he mentioned my name and I stepped forward, and I said to him, "I am the gentleman"; that is all the conversation we had; he said he knew it was me.

Q. Judge Bickford said that he knew it was you?

A. Yes.

Q. What do you mean by that?

A. Well, I suppose he knew me, knew of me; I knew who the gentleman was and I came over and told him I am that gentleman.

Q. Whereabouts was that?

(Testimony of William E. Lepley.)

Q. Whereabouts was that? A. Right here.

Q. In this room this morning? A. Yes.

Q. You never had any talk with Judge Bickford, previous to coming to the room here? A. No, sir.

Q. Nor with Mr. Walsh?

A. No, sir, don't know the gentleman.

Q. And the sole conversation you had was with Mr. Cobban and his wife in his room when you went there as a stranger in obedience to this invitation?

A. Yes, sir.

Redirect Examination.

(By Mr. BICKFORD.)

Q. In what county is this land?

A. In Choteau county.

Q. What business are you engaged in?

A. Cattle business.

Q. For what purpose do you use this land, for what purpose do you put it to?

A. There is principally stone on it, that is what we took it up for, although there is some grass grows there.

Q. Part of it then can be used for pasture land?

A. It could be used; it is not good pasture; it is mostly rocky, rough, uneven ground—rolling.

Q. And the land is of use to you in one way or another at the present time? A. Yes.

Q. You have no intention of selling it? A. No.

Q. Mr Cobban did not try to buy it, did he?

A. No, sir.

(Testimony of J. G. Hendrix.)

I hereby certify that the foregoing testimony of the witness, William E. Lepley, has been correctly transcribed.

HENRY N. BLAKE.

It is stipulated that the Examiner can certify that the testimony of William E. Lepley has been correctly transcribed and have like effect as if read, corrected and subscribed by him.

HENRY N. BLAKE,
Examiner.

J. G. HENDRIX, a witness called on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Where do you live?

A. I live at Victor, Montana, in this State.

Q. How long have you lived there?

A. I have lived there in the neighborhood of 5 years.

Q. How old a man are you?

A. I will soon be 35.

Q. Are you married? A. Yes, sir.

Q. How long have you been married?

A. Married about 13 years.

Q. How many children have you?

A. Have three children.

Q. Who was your wife previous to your marriage?

A. A Miss Alford.

Q. What do you do for a living?

(Testimony of J. G. Hendrix.)

A. Well, I live on the farm, do some farming; I work for wages part of the time.

Q. Is your employment that of a farm laborer?

A. Yes, sir.

Q. You have no farm of your own? A. No, sir.

Q. Have you any real estate of any kind?

A. No, sir.

Q. Any personal property? A. Yes, sir.

Q. What?

A. I have a team, wagon, harness, and farming implements.

Q. Whose farm are you working on now?

A. On Miss Alford's farm.

Q. Who is she? A. She is a sister to my wife.

Q. Does she live with you? A. No, sir.

Q. You are a tenant of your wife's sister?

A. Yes, sir.

Q. Were you a tenant of your wife's sister at the time you took up this claim? A. No, sir.

Q. What were you doing then?

A. Hired to work on the farm.

Q. Whose farm?

A. On the Curlew farm; it belongs to Mr. Hauser and Holter of this town.

Q. You were working on their farm? A. Yes.

Q. What is your wife's name?

A. My wife's name is Irena.

Q. How far was this Hauser and Holter farm that you were working on as a tenant farmer from Victor?

(Testimony of J. G. Hendrix.)

A. From Victor it is about three miles.

Q. You were living there when you heard to the effect that you could take up a claim up in the mountains in the Blackfoot country?

A. That was after I had taken the claim, when I was working there.

Q. Where were you working when you took up this claim?

A. I lived on a piece of land southwest of Victor.

Q. Who were you working for there?

A. I worked for different ones.

Q. Where were you living, where was this house that you lived in?

A. This house was southwest of Victor on a piece of land.

Q. How far was the house that you were working in at that time or just before you took up this claim from this Jameson crowd that lived up around Victor, Mr. Hendrix?

A. There was one Jameson lived about three miles, and another one of them lived a mile and a half; I guess that is the only two that were living around there that I remember of.

Q. What are their names?

A. One of them was G. P. Jameson.

Q. That is George, is it?

A. That is right; the other Jameson, they called him Son Jameson; I was not very well acquainted with him, knew him by the name of Son Jameson. I do not know

(Testimony of J. G. Hendrix.)

positively that that is his proper name; that is what he is called, anyway.

Q. Your wife Irena, did she take up a claim?

A. Yes, sir, she had taken up a claim.

Q. Had you ever been up in this Blackfoot country, previous to your going up there to make this location?

A. No, sir, never had.

Q. Have you been up there since?

A. Since I made the location?

Q. Yes, sir.

A. I was back up there a couple of times during the time.

Q. When you went up there in regard to this business?

A. Yes, sir, in regard to this business.

Q. These are the only times you were ever up in the Blackfoot country? A. Yes, sir.

Q. Who did you go up with the first time when you went up to make your own location?

A. I went up alone.

Q. How did you go?

A. I drove a horse and a cart.

Q. A horse and a cart? A. Yes, sir, drove up.

Q. How long did it take you to go?

A. Two days, I guess.

Q. From your home in Victor away up into the mountains? A. Yes, sir.

Q. Did you travel nights? A. No, sir.

Q. Can you state as to the distance you traveled the first day you left home? A. Yes, sir.

(Testimony of J. G. Hendrix.)

Q. How far did you get?

A. I got to Missoula.

Q. From your home to Missoula the first day?

A. The first day, yes, sir.

Q. Then how far did you go from Missoula the next?

A. The next day, I got to what is called Nine Mile Prairie, on the Blackfoot.

Q. Then how far was that from the place you located? A. It is about three miles from—

Q. From Nine Mile Prairie?

A. Yes, sir, across the river.

Q. Do I understand that you were able to go by horse and cart from Missoula to Nine Mile Prairie in the one day? A. I did.

Q. The daytime? A. Yes, sir.

Q. And you went all by yourself?

A. All alone.

Q. Never had been there before? A. No, sir.

Q. And you met Albert Jameson, when you got there?

Mr. BICKFORD.—Objected to as leading.

A. No, sir, I met him soon after I got there. Not right at the time, though.

Q. And he took you to your location, didn't he?

Mr. BICKFORD.—Objected to as leading.

A. He did take me after that, yes, after that time he showed me a piece of land.

Q. Who was with you besides Albert?

A. No one.

(Testimony of J. G. Hendrix.)

Q. How far do you say this location is from Nine Mile Prairie?

A. I don't know just exactly how much country is called the Nine Mile Prairie; from where I stopped I should judge it is about three miles to where I went.

Q. How did you and Albert go to this place?

A. We went—walked.

Q. What kind of a place was it?

A. Well, it was a kind of a hilly, broken country, pretty rough, in the mountains, mountainous country.

Q. How long were you there?

A. We started in the morning and we were there until five o'clock.

Q. You and he alone?

A. On this land, yes, sir.

Q. Then where did you go?

A. We went to Mr. Jameson's.

Q. What do you mean by that, at his house?

A. Yes, sir, at his father's house, rather; that is where he was stopping, anyway.

Q. And where he was stopping while you were up in the mountains you stopped there?

A. I stopped at that place, yes, sir.

Q. What did you do the next day?

A. I stopped over there at Mr. Jameson's, fished some and fooled around one way or another, helped Mr. Jameson do some choring there.

Q. Then what?

A. What do you mean, after that day?

Q. Yes, sir. A. You mean the next day?

(Testimony of J. G. Hendrix.)

Q. Yes.

A. I started for home the next day.

Q. Did you see Mr. Griswold up there?

A. Up the Blackfoot?

Q. When you were there at that time?

A. I did not, no, sir.

Q. Did you meet Mr. Eddy up there?

A. No, sir.

Q. Did you meet Mr. Moss?

A. Not that I remember of.

Q. Do you know J. F. Jameson?

A. J. F. Jameson?

Q. Yes.

A. Probably I met him, but I don't know him by those initials.

Q. Do you know a man by the name of E. T. Kilbourn?

A. Yes, sir, I think I do; pretty sure I do.

Q. Where did you meet him?

A. The first I ever met him was in Missoula.

Q. When?

A. Two years ago, I guess, or over.

Q. What was he doing there?

A. He was in town, and I did not ask him just what all he did, he did not tell me his occupation and I did not ask him; he may be a railroader for all I know; I am not sure what his occupation was.

Q. So that you were alone with Albert when you went out to look at this piece that he lead you to?

(Testimony of J. G. Hendrix.)

A. Yes, sir.

Q. And spent the next day in doing chores and fishing and then came home? A. Started for home.

Q. When did you file?

A. I don't know as I can state the exact date, but it was on August somewhere in the neighborhood from the tenth to the fifteenth.

Q. How soon after you returned to Missoula from the mountains on this occasion that you have now just spoken of? A. How soon did I?

Q. Yes. A. I would be two days after.

Q. You filed after coming down from the mountains and before you went to your home? A. Yes, sir.

Q. What paper, if any, did Albert Jameson give you when you left him?

Mr. BICKFORD.—Objected to as leading, and presupposing an answer or testimony that has not been given by the witness.

A. What time do you mean, when I left him up the Blackfoot?

Q. Yes?

A. Albert Jameson came down to Missoula with me.

Q. Who else was with you? A. No one.

Q. After you and Albert Jameson came to Missoula, where did you go with reference to this land business?

A. In reference to time?

Q. Yes, the first time.

A. I went to see Mr. Catlin, in Cobban's office, I believe it was.

(Testimony of J. G. Hendrix.)

Q. With Albert? A. No, sir, not with Albert.

Q. Go alone? A. Yes, sir.

Q. Who told you to go there?

A. Mr. Griswold, I believe, was the man told me to go there.

Q. When and where did you first see Mr. Griswold?

A. In Missoula.

Q. When?

A. It was during this time there.

Q. At this time? A. When I came down.

Q. Who introduced you to Mr. Griswold?

A. Mr. Jameson.

Q. Whereabouts were you?

A. We were on the corner there, about the Florence hotel.

Q. And Mr. Griswold told you to go to Cobban and Catlin's office? A. He did after that.

Q. After you were introduced to him?

A. Yes, sir.

Q. You went there alone?

A. I did, yes, sir.

Q. Neither Jameson nor Griswold were with you?

A. At the first trip I went there alone?

Q. You mean the first trip of that day?

A. Yes, the first time.

Q. Did you go back there that same day?

A. I was around the office different times during the day.

(Testimony of J. G. Hendrix.)

Q. At any time during the lay were you with Mr. Griswold or Mr. Jameson?

A. Was I with them at any time during the day?

Q. Yes. A. Certainly.

Q. In the office, I mean.

A. I was with Mr Griswold one time after that in the office, I believe.

Q. That day? A. Yes, sir.

Q. Who made out your filing papers?

A. Mr. Catlin, if I remember right.

Mr. MAYNARD.—I show witness his original sworn statement and ask him if he identifies his signature?

A. Yes, sir, I think that is my signature.

Mr. MAYNARD.—(Reads.) "Land office at Missoula, Montana, September, 5th, 1899. I, John G. Hendrix, of Victor, county of Ravalli, Montana, desiring to avail myself of the provisions of the Act of Congress, etc., for the purchase of the west half of the northwest quarter and the west half of the southwest quarter of section 32, township 14 north, of range 15 west, in the district of lands subject to sale at Missoula, Montana."

Q. You say this handwriting, this ink here, was in the hands of Mr. Catlin?

A. Is this the filing papers?

Q. Yes, sir.

A. I think Mr. Catlin made the papers, if I remember right, I am pretty sure.

Q. Who introduced you to Mr. Catlin?

A. I have known Mr. Catlin for a number of years.

(Testimony of J. G. Hendrix.)

Q. Had you known Mr. Cobban? A. No, sir.

Q. Did you see Mr. Cobban on this day?

A. Yes, sir.

Q. You say that you were alone at the time Mr. Cobban filled out this sworn statement for you?

A. I believe I was, just at the time he made this out.

Q. Did you give him a paper with the description on?

A. Yes, sir, I gave him a paper with the description on.

Q. Who gave you that paper?

A. Mr. Griswold.

Q. When? A. That morning, that day.

Q. And this paper that Mr. Griswold gave you that morning contained this description—was there any names of witnesses?

A. Yes, sir, there were four names on it.

Mr. BICKFORD.—We object to that and move to strike the answer out for the reason that it is not the best evidence of the fact sought to be proved.

Q. Do you remember those names?

Mr. BICKFORD.—We object to that for the reason that it is not the best evidence of the fact sought to be proved.

A. Yes, sir, I think I do.

Q. What were the names?

A. One name was Albert Jameson; one name was C. L. Griswold, and I think E. R. Kilbourn; I am not sure I could state the other name just now, but I am

(Testimony of J. G. Hendrix.)

pretty confident his name was John Reeves, if I am not mistaken.

Q. In the newspaper notice which I read from, and which is part of the original files, I read the names of witnesses Albert Jameson, C. L. Griswold and J. T. Jameson, all of Clearwater, Montana, and E. R. Kilbourn, of Ovando, Montana?

A. That is the best I remember them.

Q. Did you have any personal acquaintance or any knowledge of these witnesses at that time when you handed the names to Mr. Catlin, except Albert Jameson?

Mr. BICKFORD.—Objected to as leading.

A. Why, I was not personally acquainted with any of them except Albert Jameson.

Q. How did you have knowledge at that time as to how they happened to be named as witnesses for you in your location?

A. Did I have knowledge how they happened to be named?

Q. Yes. A. Yes, sir.

Q. What was that?

A. You mean why they should be named?

Q. How did they happen to be named?

A. Mr. Griswold told me that these gentlemen knew the land and would be good witnesses for me, and I could use their names.

Q. That is the reason that you assign why these names were given? A. Yes, sir.

(Testimony of J. G. Hendrix.)

Q. Because Mr. Griswold told you they knew the land and would be good witnesses.

Mr. BICKFORD.—Objected to as leading and as a mere repetition.

A. I was quite a stranger to that country, anyway.

Q. Who went with you, if you remember, Mr. Hendrix, to the land office? A. At what time?

Q. When this paper was made out for you by Mr. Catlin? A. To make my filings on this land?

Q. Yes. A. Mr. Catlin went with me.

Q. Had you ever seen Mr. Cobban to know him before, to have any business with him previous to this day you filed? A. No, sir.

Q. Do you remember who introduced you to him?

A. Yes, sir.

Q. Who? A. Mr. Griswold.

Q. Do you remember what Mr. Griswold said to Mr. Cobban at the time he introduced you?

Mr. BICKFORD.—Objected to as hearsay.

A. I do not remember just what he said now.

Q. That is the first time you ever saw Mr. Cobban?

A. Yes, sir.

Q. Where were you during the sixty days that elapsed between the time of filing and the time of your making final proof?

A. I went back home to the place where I lived; I was there in that county all the time, during the majority of the time, anyway.

Q. During this sixty days that intervened, you may

(Testimony of J. G. Hendrix.)

state as to whether or not you took your wife up into the mountains for the purpose of having her file.

Mr. BICKFORD.—Objected to as leading.

A. Yes, sir, I have taken her up there.

Q. How soon after you returned home?

A. As well as I remember, it was about two weeks, ten days.

Q. Did you take her up in the same way you went up yourself when you went to make your filing?

Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. I did not take her up in the same rig; I drove up, though.

Q. Anybody else go with you? A. No, sir.

Q. You took your wife up. Her name is Irena Hendrix? A. Irena.

Q. Did she take up a claim? A. Yes, sir.

Q. Who went with her? A. To see her—

Q. Yes. A. I did.

Q. You went with her? A. Yes, sir.

Q. To show her her claim? A. Yes, sir.

Q. Just you two? A. Yes, sir.

Q. This is the second time you had ever been up there in that country—how could you show her the country?

A. The second time I had ever been up there?

Q. Yes.

A. Simply because I took her up and showed her the claim.

(Testimony of J. G. Hendrix.)

Q. How could you identify in this mountainous country her tract? A. How could I?

Q. Yes. A. I could tell her—

Q. That is what I wanted to know.

A. Mr. Jemison showed me a piece of land during the time that I was up there and told me that that land was vacant.

Q. At the time you located Albert pointed out other piece? A. Yes, sir.

Q. He told you that that piece was vacant?

Mr. BICKFORD.—We object to all this as leading, and a mere repetition of what the witness has stated already.

A. Yes, sir.

Q. Then you went up and brought your wife up there and showed it to her?

Mr. BICKFORD.—We object to this as leading and a mere repetition of what the witness has stated before.

A. Yes, sir.

Q. Did you see Albert at all at this second time?

Mr. BICKFORD.—At this time we object to any further examination concerning any alleged acts or entry made by the claimant, Irena Hendrix, on the ground that there is no allegation in the bill of complaint touching any alleged fraudulent act by Irena Hendrix, or any alleged fraudulent entry made by her.

Mr. MAYNARD.—I desire to say in reply to that objection that if it should be true that the name of Irena

(Testimony of J. G. Hendrix.)

Hendrix is omitted from the bill of complaint by mistake, it is an omission which we shall ask by amendment to cure, and that this testimony is offered on that ground and for that reason.

A. Yes, sir.

Q. Did you stop at his father's house?

A. I did.

Q. As you did before? A. Yes, sir.

Q. What time, before or after, you had taken your wife up to this location was it that you saw Albert?

A. I saw Albert at different times when I was there, before and after, too.

Q. Did you see Mr. Griswold up there?

A. No, sir.

Q. Did you and your wife return back home alone or in company with anybody else?

A. We returned back home alont.

Q. Previous to your returning to your home you may state as to whether or not your wife filed?

Mr. BICKFORD.—At this time we object to all of these questions and to any further examination cancerning any alleged acts or entry made by the claimant, Irena Hendrix, on the ground that there is no allegation in the bill of complaint touching any alleged fraudulent acts by Irena Hendrix, or any alleged fraudulent entry made by her.

A. Yes, sir, she filed.

Q. Did she have a paper containing her description?

A. I presume so, yes.

Q. Do you know who gave it to her?

(Testimony of J. G. Hendrix.)

A. I think Mr. Jameson.

Q. Albert Jameson? A. Albert Jameson.

Q. Did you go to Mr. Cobban's office with her?

A. I did, yes, sir.

Q. Who gave the paper to him if anyone did?

A. No one didn't give it to him.

Q. Did he make out the filing papers for her?

A. Yes.

Q. Who did? A. Mr. Cobban.

Q. Do I understand you to say that you did not give this paper to Mr. Cobban? A. That I did not?

Q. Yes.

A. I think I handed the paper to Mr. Cobban; I think I was the man that handed it to him.

Q. For your wife? A. Yes.

Q. He made out the filing paper. Who went with you, if anyone, to the land office?

A. No one except my wife.

Q. I mean at the time she filed. A. Yes, sir.

Q. No one from the office went there?

A. No, sir.

Q. Then, after the filing, she went home with you?

A. Yes, sir.

Q. She did not return with you at the time you made your final proof, did she? (No answer.)

Mr. BICKFORD.—We object to that as leading.

Q. When you came back to make your final proof on your entry, were you accompanied by your wife?

(Testimony of J. G. Hendrix.)

Mr. BICKFORD.—Objected to as leading.

A. Yes, sir.

Q. She came with you?

Mr. BICKFORD.—Objected to as leading.

A. She came down to Missoula with me.

Q. You may state as to whether or not she made her final proof at the same time.

A. No, sir, she did not.

Q. Do you remember when you came to make your final proof who you saw in connection with the case?

A. I do not know that I could state all the ones just now. I think I can the majority of them, though.

Q. Who did you see?

Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. I saw Mr. Catlin for one; saw Mr. Jameson and Mr. Griswold.

Q. You say you saw Mr. Griswold and Mr. Jameson at the time you made your final proof, and Major Catlin?

A. Yes, sir.

Q. Have you now any present recollection of seeing any other person?

A. You mean those relating to this—

Q. Sure.

A. Yes, sir, I saw Mr. Cobban the same day, I believe.

Q. Anyone else?

A. That is all the names that I could state; there may be other people there, but I was not acquainted

(Testimony of J. G. Hendrix.)

with—all the people that were around the office at that time.

Mr. MAYNARD.—I read here from the original papers: "Receiver's office at Missoula, Montana, Nov. 10, 1899. Received from John G. Hendrix of Victor, Ravalli County, Montana, the sum of four hundred dollars and no one hundred cents; being in full for the west half of the northwest quarter, and the west half of the southwest quarter of section 32, township 14, of range 15 west, containing 160 acres and no-hundredths, at $2.50 per acre. $.75 testimony fee received. No. of written words, 332. Rate per hundred words, 22 1/2 cents. Also register and receiver's fee, ten dollars."

Q. You may state, Mr. Hendrix, who paid this 400 dollars that was paid for this land into the land office.

A. Mr. Catlin.

Q. On what day was this?

A. I could not state the exact day, but I thought a while ago it was in October.

Q. It was on the day you made your final proof?

A. It was on the day I made my final proofs.

Q. Did you pay any money of your own into the land office on that day?

A. I think only this what he paid.

Q. Was this at the time you made your final proof?

A. Yes, sir.

Q. Who went with you to the land office?

A. Mr. Catlin.

Q. Was he there at the time the testimony was given?

(Testimony of J. G. Hendrix.)

A. Yes, sir.

Q. It seems that one of the witnesses that appeared at the time was Mr. Kilbourn? A. For me?

Q. Yes, sir.

A. Yes, sir, I think he was one of them.

Q. Now, that I call your attention to it, you remember the fact, do you?

A. Yes, sir, I am pretty confident Mr. Kilbourn was one that appeared there.

Q. You may state as to whether you had ever seen him before that day to your knowledge?

A. Mr. Kilbourn?

Q. Yes.

A. I think I seen the gentleman before that day to the best of my recollection.

Q. Are you able to state when that was, or where?

A. I think it was during this time when I first came down to Missoula.

Q. At Missoula? A. Yes, sir.

Q. Are you able to at all fix any more definitely the time or the particular place in Missoula where you met this Mr. Kilbourn?

A. I think I received an introduction to Mr. Kilbourn down to the land office, or near the land office, the best I remember.

Q. On this day? A. Yes, sir.

Q. After Mr. Catlin paid this money in for you at the land office, as you have now testified, you may state if you went to Mr. Cobban's office that some day.

(Testimony of J. G. Hendrix.)

Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. Yes, sir, I was in Mr. Cobban's office during that day.

Q. Before or after you proved up?

A. Before and afterwards, both.

Q. After you had proved up and after this money had been paid in this day to the land office by Mr. Catlin, you may state as to whether or not you conveyed this land to Mr. Cobban.

Mr. BICKFORD.—Objected to as leading and not the best evidence.

A. Yes, sir, I conveyed it to him.

Q. Your wife was in town at the time?

A. Yes, sir.

Q. She joined with you in the conveyance?

A. Yes, sir.

Q. Where were you?

A. Do you mean where we stopped?

Q. No, where were you when you conveyed?

A. Well, it is in the Higgins block.

Q. In Mr. Cobban's office?

A. In Mr. Cobban's office, yes, sir.

Q. Who was present besides you and your wife at the time you conveyed

A. I don't believe there was anybody present, except Mr. Cobban and the typewriter, or something of that order, it was about noon hour and not many people were around.

(Testimony of J. G. Hendrix.)

Q. At that time you and your wife signed your names to this deed?

Mr. BICKFORD.—Objected to as leading and not the best evidence.

A. Yes, sir.

Q. Was it drawn up while you were there, or was it already drawn and ready for your signature when you came back to the office?

Mr. BICKFORD.—Objected to as leading.

A. The deed was drawn after I went to the office.

Q. It was? A. Yes, sir.

Q. Who drew it?

A. I could not state the man's name; I never did know what his name was.

Q. At that time and place when you executed the deed to this particular land how much money did you receive for it? A. At that time?

Q. At that time; yes, sir.

A. I think I received ninety or a hundred; I am not sure just which.

Q. Received ninety or a hundred what?

A. Dollars.

Q. And who did you receive this 90 or 100 dollars from? A. I received it from Mr. Cobban.

Q. In what shape?

A. It was in currency, bills.

Q. You had previously borrowed ten dollars from him, hadn't you, or fifteen?

(Testimony of J. G. Hendrix.)

Mr. BICKFORD.—Objected to as leading.

A. From Mr. Cobban?

Q. Yes, or Mr. Catlin.

A. Yes, sir, I borrowed from Mr. Cobban.

Q. What was it, ten or fifteen dollars?

Mr. BICKFORD.—Objected to as leading.

A. I think it was ten dollars.

Q. When was that?

A. At the time I made the filing on the land.

Q. You borrowed ten dollars from Mr. Cobban at the time of the filing? A. At the time, yes, sir.

Q. And then you received ninety or one hundred dollars at the time you conveyed to him?

A. That is, the money I received, had coming to me, yes, sir.

Q. Did you receive any other money from Mr. Cobban or anybody representing him except this?

Mr. BICKFORD.—Objected to as leading.

A. I did not receive the money with my own hands. Mr. Catlin attended to it for me, he paid it into the land office.

Q. I mean all you got at the time was this 90 or 100 dollars?

Mr. BICKFORD.—Objected to as leading.

A. All the clear money I had coming to me was this.

Mr. MAYNARD.—The deed which witness refers to, a certified copy of which has been offered in evidence, and numbered Complainant's Exhibit No. 25, in parts

(Testimony of J. G. Hendrix.)

reads as follows: "This indenture made the tenth day of November, in the year of our Lord, one thousand eight hundred and ninety-nine, between John G. Hendrix, and Irena Hendrix, his wife, of Ravalli county, Montana, parties of the first part and R. M. Cobban, of Missoula, Missoula county, Montana, party of the second part, Witnesseth: That said parties of the first part for and in consideration of the sum of one thousand dollars, lawful money of the United States of America, to them in hand paid, do sell, convey and confirm, etc., the west half of the northwest quarter and the west half of the southwest quarter of section 32, township 14 north, of range 15 west, of Montana Meridian." Which was acknowledged on the same day before Mr. Dan. H. Ross, a notary public in and for Missoula county.

Mr. BICKFORD.—We move to strike all this out as not being any question put to the witness and no answer given, but a mere statement of counsel and reading of testimony in evidence.

Q. Have you personal knowledge of the fact that your wife, Irena Hendrix, also conveyed to Mr. Cobban?

Mr. BICKFORD.—Objected to as leading.

A. In this deed?

Q. I mean by her own location that she took up as you have testified?

Mr. BICKFORD.—Objected to as irrelevant and immaterial; there is no allegation in the bill of complaint touching any entry made by Irena Hendrix or any con-

(Testimony of J. G. Hendrix.)

veyance made by her. The question is concerning a transaction which occurred during coverture and it is not competent for a husband to testify concerning such a transaction.

A. I think that she conveyed hers to Mr. Cobban.

Q. Were you present at the time?

A. Yes, sir; I think Mr. Cobban was the man that became the owner of the land.

Q. You, I suppose, are unable to recall a description of this land?

A. I am, yes, sir; I am not positive, don't know the numbers of the land.

Q. How far was this location that your wife made from your own piece?

Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. I should judge it is about 5 or 6 miles.

Q. You don't know the township or section or anything about it, I suppose?

A. I could not state that, no, sir.

Q. Now, Mr. Hendrix, you may state as to whether or not previous to your going up, as you say, alone in your own conveyance, up there to make this location as a stranger into this mountainous country, you had heard that people had an opportunity to take up these claims, and because of that fact you went up there as you did?

Mr. BICKFORD.—Objected to as leading.

A. Yes, sir, I had heard that.

(Testimony of J. G. Hendrix.)

Q. Who did you hear it from?

A. I had heard it from different parties in the county that they were taking land in that country, locating it.

Q. That what?

A. That anyone could locate—I heard there was vacant land there, I heard it from different ones.

Q. Now, what I am anxious to get at in your own way, Mr. Hendrix, is to know how generally it was scattered throughout that entire section of country that a man could go up there and take up a claim under this Stone and Timber Act and sell and get his hundred dollars?

Mr. BICKFORD.—We object to that because the witness has not yet testified that he ever heard, that it was rumored or circulated that a man could take up a claim and get his hundred dollars; it assumes a lot of matter that the witness has not testified to, and that it is irrelevant and incompetent.

A. Do you want me to state the names?

Q. I would like to have you state as many names as you can?

A. Why, the first I heard about it, Mrs. Tom Roll came to where we were living and she was telling my wife about it; that is one.

Q. Mrs. Thomas Roll—she is a sister of Albert Jameson, isn't she?

Mr. BICKFORD.—Objected to as leading, irrelevant and immaterial.

A. Yes, sir, she is a sister of Albert Jameson.

(Testimony of J. G. Hendrix.)

Q. Now, who was the next one, Mr. Hendrix?

A. The next one I could not state there was different ones, but I could not state who was the next first one that told me about it; there were others in the neighborhood that I heard talking about it; I could not state the next first one; I heard a few others.

Q. You may state as to whether or not from your personal knowledge as the result of this information which you say was spread throughout the community there was any anxiety on the part of the people up there to go up into the mountains and take up these claims?

Mr. BICKFORD.—We object because the witness has not testified any such information was spread throughout the locality and because the question is immaterial and irrelevant, and does not ask for any fact, but calls for a conclusion which the witness is asked to deduct from fact.

A. It was reported that there was some people that was anxious to go and take up some lands, timber claims.

Q. You may state as to whether you knew at the time or heard of people living up in your country rushing in, traveling on by day or by night also, in their anxiety to get up into the mountains to take up these claims?

Mr. BICKFORD.—We object to that as leading, immaterial and hearsay.

A. I heard it reported that there were several parties that drove during the night-time, I did not see them, that is the report.

(Testimony of J. G. Hendrix.)

Q. Drove during the night-time, for what purpose was it report)ed?

A. I don't know whether it was on account of cool weather for their stock, or whether they were anxious to get there or not; I could not say about that; the weather was hot during the time and I heard it reported they might have driven after night to get the cool of the weather for their stock.

Q. They might have done that?

A. They might have done that.

Q. But hadn't you heard, and didn't you know at the time from what you did hear so far as you could gather information in that way that the people were moving by night in their anxiety to take up claims for the purpose you have stated?

Mr. BICKFORD.—Objected to as irrelevant, incompetent and leading and as hearsay.

A. I heard it reported, this was some time before; I did not go during the time these people were going up there—reported around; I was busy at the time and did not go.

Cross-examination.

(By Mr. WALSH.)

Q. Mr. Hendrix, how long have you lived up in Ravalli county?

A. I think it has been about ten years, if I am not mistaken, since I first came to the Bitterroot valley.

Q. You are a citizen of the United States?

A. Yes, sir.

(Testimony of J. G. Hendrix.)

Q. Native born? A. Yes, sir.

Q. What State were you born in?

A. Tennessee.

Q. You were over the age of 21 years at the time you took up this claim? A. Yes.

Q. You had never taken up a timber claim before?

A. No, sir.

Q. You understood at the time that you had a right to take up a timber claim? A. Yes, sir.

Q. Now, as I understand you, you had no conversation about taking up this claim with anybody until you met Mr. Jameson up in the Blackfoot?

A. I think I talked to different ones about going up and taking up this land.

Q. You did talk to some people about it?

A. Yes, sir.

Q. What conversation, if any, had you ever had with Mr. Cobban before you met Mr. Jameson up in the Blackfoot? A. I had never seen Mr. Cobban.

Q. Did you ever, prior to that time, talk to Mr. Catlin about taking up a timber and stone claim?

A. No, sir.

Q. Had you ever talked to Mr. Griswold prior to that time about taking up a timber and stone claim?

A. No, sir.

Q. At whose suggestion, if anybody's, did you go up there for the purpose of taking up a timber claim, or was it done upon your own motion?

A. There was a gentleman told me if I went up he

(Testimony of J. G. Hendrix.)

thought I could find some land up there vacant and get a claim; he told me he had been up there, so I went.

Q. But what I asked you was whether anybody asked you to go up there or whether you went on your own accord? A. I went on my own accord.

Q. Now, about this proposition of going up into the mountains; you started from your home and went to Missoula, drove to Missoula the first day in your cart?

A. Yes, sir.

Q. About how far is that?

A. I am not sure; it is 35 miles, I think, above Missoula.

Q. Do you encounter any very dangerous mountains, on the road from Victor to Missoula?

A. No, there is no dangerous road that I would consider.

Q. Nice, level country road all the way?

A. Very nice.

Q. It is an extensively traveled road, isn't it?

A. Yes, sir.

Q. Runs right down the margin of the Bitterroot?

A. Yes, sir.

Q. Which way do you go from Missoula to Nine Mile Prairie?

A. I go from Missoula to Bonner, then I go up the Blackfoot a ways and I take a cutoff that went through the mountain over to the Nine Mile prairie.

Q. No very dangerous mountains between Missoula and Bonner?

(Testimony of J. G. Hendrix.)

A. Well, there is some broken country there, this one way I went; I don't know that it is very dangerous; it is up hill and down hill.

Q. A good traveled road?

A. Well, there is lots of people traveling it, if a man don't want to be hard on his horse he could walk up and down the hill.

Q. There is a good road between Missoula and Bonner? A. Yes, sir, there is a good road.

Q. It is a road that has been traveled for 40 years or more? A. I presume.

Q. It is right by the Missoula river, or the Hell Gate river? A. It is up the Blackfoot.

Q. I am talking about between Missoula and Bonner?

A. Yes, sir, it is on the Missoula.

Q. There is between Missoula and Bonner as fine a country road as there is anywhere in this State so far as you know? A. Yes, sir, there is.

Q. That takes you six miles on the road?

A. Seven miles.

Q. From there you go which way?

A. I go from Bonner up the Blackfoot a ways.

Q. How far is it from Bonner to Nine Mile Prairie?

A. Well, I think it is, it is stated to me that it is 20 or 22 miles, the way I went.

Q. You would think it is about that from the way you traveled? A. I presume it was.

Q. What kind of a road do you find there?

(Testimony of J. G. Hendrix.)

A. Well, I found half of it a good traveling road; the other part is broken in places; it is up hill and down.

Q. Extensive lumbering carried on there?

A. There was at one time.

Q. There is a large mill at the mouth of the Blackfoot river? A. Yes, sir.

Q. The Blackfoot Milling Company's mill?

A. Yes, sir.

Q. They have been conducting lumber operations there for a great many years? A. Yes, sir.

Q. This road runs right up the margin of the Blackfoot river, up to Nine Mile Prairie?

A. I go some miles up the Blackfoot; I did not go around through the Cammas road; they told me it was rough over there and I turned off after I got to a certain place.

Q. There are not any very dangerous or difficult hills to climb, between Bonner and Nine Mile Prairie?

A. Oh, there is not any dangerous hills; I think they are pretty steep.

Q. But it is a good road?

A. It is level, level, that is, for a rig to travel.

Q. You do not consider it a very dangerous undertaking for you to drive from Victor to Nine Mile Prairie?

A. Not in two days, no.

Q. You found Mr. Albert Jameson when you got there?

A. Yes, sir.

Q. How did you happen to meet him, Mr. Hendrix?

A. Well, I drove up to Mr. Jameson's house, that is

(Testimony of J. G. Hendrix.)

Ab's father's place. I inquired there if it was Nine Mile Prairie, and the lady asked me where I was from, and I told her and she said she used to live in the Bitterroot close to where I lived at that time; she said she thought she was acquainted with my woman. I stopped there a while and Abe came in; he had been out looking after some stock. It was late and I asked them if I could stop there that night and they said I could.

Q. You made known the business that brought you to that section?

A. Yes, sir, I said to Mr. Jameson what I came up for.

Q. Which of the Jameson families, if any, had you known prior to that time?

A. I had known Mr. Abe Jameson prior to that time.

Mr. MAYNARD.—Was this Albert that you mean?

A. Yes, sir, Albert Jameson.

Mr. WALSH.—How did you come to him to go along with you to select this land?

A. I asked him if he knew of any land that was vacant up there and he said he thought he did; he said he helped work for the Government, I thought he said helped survey the land; he said there was some railroad land and some vacant land; he said he thought he could find some land that was vacant.

Q. Now, what conversation, if any, did you have with Mr. Albert Jameson at that time about selling this land?

A. About selling it?

Q. Yes.

(Testimony of J. G. Hendrix.)

A. I don't remember that there was very much said about selling it during that time, if anything or not between Jameson and I.

Q. Well, did you agree with Mr. Albert Jameson at that time that you would sell the land to Mr. Cobban or anyone else?

A. No, sir, I didn't agree to sell it to anybody.

Q. Well, did Mr. Albert Jameson hire you at that time to go out and locate the land for Mr. Cobban?

A. Did he hire me to?

Q. Yes. A. Why, no.

Q. He didn't agree at that time that if you would go out and select this land for Mr. Cobban he would pay you one hundred dollars?

A. I never heard McCobban's name at that time.

Q. Or anybody else that would hire you, pay you one hundred dollars for locating that land for him?

A. No, he did not talk like that to me.

Q. Well, Albert came into Missoula with you, you say, when you came back?

A. When I came back to Missoula Albert came down with me.

Q. Had you known Albert prior to that time?

A. Yes, sir, I had known him in the Bitterroot before that.

Q. Somewhat well acquainted with him at that time?

A. Well, fairly well acquainted with him; I met him at different times and I had been to his place where he lived, and he had also come to my place.

(Testimony of J. G. Hendrix.)

Q. When you came into Missoula, you met Mr. Griswold there, I understand?

A. I met Mr. Griswold there the next morning.

Q. How did you happen to meet him?

A. We were walking down the sidewalk with Mr. Jameson and met Mr. Griswold, and Jameson introduced him to me.

Q. Now, I think you said that at that time, Mr. Griswold gave you a paper with a description of the land on the paper? A. Yes, I believe.

Q. Are you quite sure that Mr. Griswold wrote it out?

A. Yes, I think Mr. Griswold.

Q. How did that come about, Mr. Hendrix?

A. Why, Mr. Jameson, I think, stated to Mr. Griswold that he had known me up the Bitterroot before and that I had been up taking up a timber claim; and he asked Mr. Griswold about a certain claim, described it to him, and asked him if he was acquainted with it; he said he was and I think Mr. Griswold said that he knew the numbers of the land, so he went to a different place and from that he figured out the numbers of the land and gave me a paper and I went over to get Mr. Catlin to make out some filing papers for me.

Q. Now, did Mr. Griswold hire you at that time to make this entry of the land for Mr. Cobban?

A. Oh, no.

Q. Are you sure of that? A. Yes, sir.

Q. Well, didn't you make some kind of an agreement

(Testimony of J. G. Hendrix.)

with Mr. Griswold at that time that you were going to sell this land?

A. No, sir, there was nothing said about selling the land.

Q. Nor anything about going to enter it for Mr. Cobban or anyone else?

A. Nothing said about anyone at all.

Q. How was it that you happened to go to Mr. Catlin about this matter?

A. Why, I had been acquainted with Mr. Catlin for a number of years; he did business for me before; he used to be in Ravalli county there.

Q. What kind of business had he ever done?

A. He did some land business, some deeds one way or another when he was in Ravalli county.

Q. You went to see him? A. Yes, sir.

Q. You told him what business you wanted with him?

A. Yes, sir.

Q. Well, now, Mr. Hendrix, you made a filing on the land at that time? A. Yes, sir.

Q. And went back to your home and came back subsequently and made your proof on it? A. Yes, sir.

Q. Now, I suppose you know, Mr. Hendrix, at the time you took up this land that it would be necessary to pay the government something for it? A. Yes.

Q. You knew the price of the land? A. Yes, sir.

Q. Well, what arrangement, if any, did you make about providing the money with which to pay for the land when you should make final proof on it?

(Testimony of J. G. Hendrix.)

A. I asked Mr. Catlin if he could loan me the necessary money to pay the land office and I would pay him back, and he said he could furnish some money; yes, he would fix it up if I would return the money at my convenience, something of that way.

Q. It was under that arrangement that Mr. Catlin took the money to the land office to pay for the land?

A. Yes, sir, he told me he would take it down for me.

Q. Well, are you quite sure Mr. Catlin did not hire you to take up this land for Mr. Cobban and agree to pay you for taking it up for Mr. Cobban?

A. No, sir, I never had any talk with Mr. Catlin, or any consideration about any subject like that at all.

Q. Well, when did you first talk to Mr. Catlin or anybody else about selling this land?

A. About selling the land; why the day I proved up I had some little talk after I made my proof, with Mr. Catlin in regard to selling the land; I thought I had a right to sell it after I made proof.

Q. And came to terms with him; agreed upon the price you were to get?

A. Mr. Catlin told me that he thought I could make a sale to Mr. Cobban, so I went up to Mr. Cobban's office; he showed me where to go at the time, and I had a talk with Mr. Catlin, so I went up there and I made a bargain with Mr. Cobban.

Q. Sold the land under that agreement?

A. Sold the land, conveyed the land to him.

Q. When you went up to select the land, you went to

(Testimony of J. G. Hendrix.)

Missoula and stayed at Missoula the first night, then went on the next day?

A. Yes, sir, went on the next day.

Q. Your return trip you made in the same way, except that you stayed over one day, as I understand you, in Missoula? A. Yes, sir.

Q. Who paid your expenses?

A. Paid my own expenses.

Q. In the sworn statement that you made at the time you filed on the land, Mr. Hendrix, there appears the following: "that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." I wish you would state whether that was true at that time, Mr. Hendrix? A. That was true, that is correct.

Q. It also appears at the time you made your final proof, Mr. Hendrix, you were asked this question: "Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure, in whole or in part, to the benefit of any person except yourself?" To which you an-

(Testimony of J. G. Hendrix.)

swered, "I have not." I wish you would state if that is true, Mr. Hendrix. A. That is true.

Q. You were also asked: "Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use and benefit of any other person?" To which you answered "Yes." I wish you would state if that is true?

A. Yes, sir, that is true, for my own benefit.

Q. You were also asked this question: "Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making, or in the land, or in the timber thereon?" to which you answered, "No, sir." Was that true at that time?

A. That is true.

Redirect Examination.

(By Mr. MAYNARD.)

Q. You say that you thought you had a right to sell to Mr. Cobban, and get your 100 dollars immediately after you had proved up?

Mr. BICKFORD.—We object to that because the witness has not said he thought he had a right to sell to Mr. Cobban and get the one hundred dollars.

A. You say did I say that?

Q. Yes, you say that you thought you had a right to sell to Mr. Cobban and get your one hundred dollars immediately after you had proved up?

A. I considered the land belonged to me after I had made proof and I thought it was my own; I was 21 years old, and thought I had a right to sell it if I wished.

(Testimony of J. G. Hendrix.)

Q. When did you see these questions first that were put to you and that you signed in the land office?

A. Where did I see them first?

Q. Yes, where were they read over to you?

A. They were read over to me at the land office, if I remember right; I think that is it.

Q. Had you ever seen similar papers to that before?

A. No, sir, that is the first I had ever seen like these.

Q. Never had seen similar papers, nor did not know what the substance of these questions were previous to your going into the land office at the time you gave your final testimony?

A. Did I ever see any like these before?

Q. Yes.

A. These are the first kind of these papers that I have ever saw before.

Q. How long were you in the land office in filling out your testimony?

A. I could not state how long, not very long, though.

Q. Do you know who filled out these blanks?

Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. These blanks?

Q. Which contains the testimony of yourself at the time you proved up; who did this writing here?

A. I do not know the man's name now; a clerk in the land office.

Q. Do you recognize that man there? (Indicating Mr. Hershey.)

(Testimony of J. G. Hendrix.)

A. Yes, sir, I think I do; I did not before.

Mr. MAYNARD.—The witness identifies Mr. Hershey.

Q. There seem to be fifteen different questions that were in printed form and that were filled up in writing; now, just simply state your best recollection as to what was done at the time this paper was filled out?

Mr. BICKFORD.—Objected to as not the best evidence; the papers themselves being the best evidence as to what they contain, and as also being irrelevant and immaterial, and for the further reason that it is not proper redirect examination.

A. I could not state the question I was asked now, not all of them.

Q. What I am talking about, Mr. Hendrix, is just to describe what took place there when this paper was filled out, to the best of your recollection?

A. Well, I think I went down during the day that I was to make my final proof, and I met Mr. Hershey there, and I suppose he went to work and took the evidence of the witnesses.

Q. And your own? A. Yes, sir.

Q. What was done by him at that time, that is what I am trying to get at, did he read these questions over to you?

A. Well, I think he read them over to me, either read them or asked them.

Q. All I want is your best recollection on the subject.

A. My best recollection is that he read these ques-

(Testimony of J. G. Hendrix.)

tions over or asked them, I could not say, because I do not remember whether he read them or asked them.

Q. Do you know who was present at the time just when he was filling out this paper?

A. Yes, sir, there was—I could state some that were present.

Q. What were you doing—were you inside of the office, or on the outside of the office railing?

A. I was on the outside of the office railing.

Q. Standing up?

A. Sitting in a chair part of the time; might have stood up some.

Q. I mean when these questions were put to you?

A. Oh, I think I was sitting in a chair.

Q. Was there anything else done except these blanks being filled up, if you can remember?

A. Nothing else done.

Q. That is done by you or by the officers; any questions put to you or anything else except these blanks were filled in as they appear here in this testimony?

A. No, there was nothing else done.

Q. By you or the office?

A. By me or the members of the office?

Q. Yes.

A. Not by me or the members of the office.

Q. Now, let me clearly understand you; had you never seen this paper nor this printed blank before you went in there?

A. I never saw one of that kind; no, sir.

(Testimony of J. G. Hendrix.)

Q. Never had? A. No, sir.

Q. Now, then, you have already stated that the only time that you were on this land was on the day you went there with Albert? A. Did I say that?

Q. Yes.

A. That is the only time I was ever on it; I said it?

Q. Is that so?

A. I have no knowledge of stating it.

Q. Well, is it so?

Mr. WALSH.—This is not a fair way to treat this witness, the witness is entitled to fair treatment. The witness is simply asking whether he stated so or not; you said he did.

A. I have no knowledge of stating that was the only time I was on it.

Q. How many times were you on this land you located altogether, previous to the time of giving your testimony?

A. I was on it one whole day after the time.

Q. When was that?

A. That was about two weeks afterwards.

Q. Was that the time you took your wife up there?

A. No, that was not the time; I don't think that I took my wife up there.

Q. Was your wife with you?

A. When I went on there the second time?

Q. Yes. A. No, sir.

Q. What were you doing up there on this land the second time?

(Testimony of J. G. Hendrix.)

A. Went there to look over the land, locate the corners, etc.

Q. You did not refer to this time at all at the time of giving your testimony.

Mr. WALSH.—He was not asked about it.

A. Did not refer to it. Was not asked about it; you ought to have asked me the question, everything in full, and I might have remembered that.

Q. So that when you went on this land the second time, as you now state, was that before or after you filed on it?

A. It was after I filed , the second time I went on it.

Q. Now, then, you filed on the land as you have already sworn on your direct examination; do I understand that after you filed you went back there up upon that land?

A. Yes, the understanding I had.

Q. Who told you to do that? A. Who told me?

Q. Yes.

A. I told myself; I went up on my own accord. I went there to look over it, see how much timber there was on it, locate the corners, etc., get acquainted with it.

Q. How long were you on it?

A. I was on it three-quarters of a day, something like that.

Q. Who were you with that time?

A. I was alone.

Q. Who did you go up there with?

(Testimony of J. G. Hendrix.)

A. Who did I go up there with?

Q. The second time?

A. The second time I went up on this land?

Q. Yes, sir.

A. There was a couple of gentlemen and a couple of ladies; one of their names is John Olford, and another name Abe Farmer, another name was Miss Susie Olford, and Mrs. Tillie Olford.

Thereupon further hearing was continued until 2 P. M.

Wednesday, 2 o'clock P. M., March 12, 1902.

Hearing resumed pursuant to recess.

The witness, JOHN HENDRIX, was recalled for further examination.

Redirect Examination.

(By Mr. MAYNARD.)

Q. Mr. Hendrix, who did you say that you took up to the mountains on this second trip?

By Mr. BICKFORD.—He didn't say that he took anybody up to the mountains at that time; and we object to the question for the reason that it assumes that the witness has given testimony to that effect, when in truth he has not.

By the EXAMINER.—Now, you may answer the question.

A. I didn't say that I took anybody up to the mountains.

(Testimony of J. G. Hendrix.)

Q. Let me inquire of you. Since the noon recess have you had a talk with Mr. Cobban, Mr. Hendrix?

A. Have I had a talk with him?

Q. Yes.

A. Yes, sir; I met Mr. Cobban during the noon recess. I was with him for a while.

Q. What did you say?

A. Yes, sir, I was with Mr. Cobban for a while.

Q. And were you with any of the lawyers that represent Mr. Cobban? A. Since noon?

Q. Yes, sir. A. No, sir.

Q. Haven't had any talk with them?

A. No, sir.

A. When did I meet them last?

A. When did 5I meet them last?

Q. Yes, sir.

By Mr. BICKFORD.—We object to that, upon the ground that it assumes that the witness has met them, or assumes a state of facts which has not been testified to by the witness on the stand, or any other witness.

By Mr. MAYNARD.—Well, we take judicial notice of this fact that he did so testify..

A. At noon, when I went out?

Q. Yes, when did you meet them last? At noon, when you went out?

A. I never met this gentleman here at all, that I have any knowledge of. (Witness meaning Mr. T. J. Walsh.)

(Testimony of J. G. Hendrix.)

Q. When did you arrive in town?

A. Sunday at two o'clock.

Q. And this is Wednesday noon? A. Yes, sir.

Q. You have been here three days, then?

A. Yes, sir.

Q. You say Mr. Cobban—you saw Mr. Cobban on Sunday, did you not, Mr. Hendrix?

A. No, sir. No, sir, I didn't see Mr. Cobban on Sunday.

Q. Because he was out of town?

A. I didn't know whether he was in town or not.

Q. Do you know when he did return to town?

A. No, sir, I do not.

Q. Did you see him on Monday?

A. No, sir, I didn't see him Monday.

Q. Not at all? A. No, sir.

Q. Was it not until yesterday morning that you saw him?

A. Yesterday morning was the first time I met Mr. Cobban since I came here.

Q. How did he happen to find you, do you know?

A. No, sir, I don't know how I met him.

Q. Were you up to his rooms?

A. Up to his rooms?

Q. Yes, sir. A. No, sir.

Q. Where did you meet him?

A. I met him at the Cosmopolitan Hotel here first.

Q. And you have seen him several times since?

A. I have been with him several times since, yes, sir.

(Testimony of J. G. Hendrix.)

Q. He spoke to you several times about the testimony that you were to give in the case, did he not?

A. We had a little talk in regard to the matter in the suit.

Q. Now, then, when I examined you before on the direct examination, I knew nothing about this second trip of yours, and so I will have to ask you in regard to that, the same as if you was on the stand for the first time.

A. This second trip?

Q. Yes, when you took your relatives up there?

By Mr. BICKFORD.—He didn't say that they were relatives, and that is merely an assumption of counsel that he took his relatives up there, or that he took anybody, nor has the witness testified that he took anybody whatever up to the mountains, and we therefore move to strike out this remark of the counsel's from the record.

Q. Now, I want you to name these four persons that went up with you into the mountains.

A. That went up with me?

Q. Yes, that you named just before recess at noon.

By Mr. WALSH.—We object to that as being irrelevant and immaterial, and not proper redirect examination.

A. Those people that I went up with were two gentlemen; one's name was John Alford and one's name was Abe Farmer, and Mrs. Tillie Alford. This was the party that I went up with.

(Testimony of J. G. Hendrix.)

Q. You testified that your wife was an Alford before you married her, did you not?

A. Yes, sir, I did.

Q. Now, what relation were these Alfords to her?

A. Mrs. Alford was a sister, and Mr. Alford was a brother.

Q. What is the sister's first name?

A. Susie Alford.

Q. What is the brother's name?

A. John Alford.

Q. That is your wife's sister and your wife's brother?

A. Yes, sir.

Q. Now, who were the other two?

A. The other two? The other two was Abe Farmer—

Q. Abraham Farmer?

A. Yes, Abraham Farmer.

Q. Who is he? A. Abraham Farmer.

Q. Yes; was he any relation of your wife's?

A. Not that I know anything about.

Q. And who was the fourth party?

A. Mrs. Tillie Alford.

Q. How do you spell it, Tillie; how do you spell it?

A. I don't know, I never heard it spelled; I don't know how she spells it.

Q. Mrs. Tillie Alford, who is she?

A. John Alford's wife.

Q. And she was your wife's sister in law?

A. Yes, sir.

Q. Where do they live?

(Testimony of J. G. Hendrix.)

A. Why, they lived in the Bitterroot at that time, in Ravalli County, it is in this State.

Q. Did they take up claims?

A. Yes, sir, I think they did.

Q. And what—did you go with any of them when they filed?

By Mr. WALSH.—We object to this because there is no allegation in the bill of complaint concerning these people or any of them, and the testimony is therefore irrelevant and immaterial to the issues in this case.

By Mr. MAYNARD.—In answer to defendant's counsel I will say that the Government will ask to amend his bill of complaint in regard to these four entries, as it is the purpose of the complainant in the case to include them in its allegations in the bill.

By Mr. BICKFORD.—At this time I will state that in all probability the Government will not want to amend its complaint when it discovers that the people mentioned never made final proof upon the land or of any land.

A. Down to the land office, you mean?

Q. Yes, sir.

A. No, I don't think I did. I wasn't near the land office during the time they were doing their business at all.

Q. Why didn't you go with them to the land office?

A. No, sir, not that I have any knowledge of, not at all.

Q. You did not go with them to the land office, you say? A. No, sir.

(Testimony of J. G. Hendrix.)

Q. Do you know as to whether they did go or not?

A. Why, I heard they did.

By Mr. BICKFORD.—We object to that upon the ground that it is hearsay testimony.

Q. You heard that they did?

By Mr. BICKFORD.—We object to that for the reason that it calls for hearsay testimony.

A. Yes, sir.

Q. Did you hear that they afterwards deeded to Mr. Cobban?

By Mr. WALSH.—We object to that for the reason that it is hearsay, in the first place, and in the second place it is not the best evidence of the fact sought to be elicited, and upon the further ground that it is irrelevant and immaterial.

A. I don't know whether they ever proved up or not, all of them.

Q. If not all at once, do you say which proved up?

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial and seeks to bring forth hearsay testimony and further that the record itself is the best evidence of the fact sought to be adduced.

A. I heard that Mr. Alford or his wife one did prove up but I heard there was one of those that didn't—that hadn't proved up and whether they did or did not I couldn't say, I am sure.

Q. Only one of the four proved up? A. Yes, sir.

(Testimony of J. G. Hendrix.)

Q. Which one this was you don't know, or do you know?

A. Well, it was either John Alford or his wife; I heard they didn't prove up at the time. Maybe they did afterwards, I don't know.

By Mr. BICKFORD.—We move to strike out the answer of the witness as not being responsive to the question and further for the reason that it is irrelevant and immaterial and not the best evidence or any evidence whatever of any kind.

Q. You took this relative of yours and this man up into this mountain?

A. You say I did take them up in there?

Q. Yes, did you not?

A. Well, I didn't say I did.

Q. Well, did you? A. No, sir, I did not.

Q. How did you go?

A. I went with them. I went up with them. They was taking me up.

Q. Well, how did you come to go up at all?

A. To show them the way. They had never been up there before, and they said they would like to have me go with them to show them the way. They had not been down in this country very long, and they didn't know the way.

Q. How long were you gone?

A. We started on Sunday and I think we got back

(Testimony of J. G. Hendrix.)

either Friday or Saturday and I wouldn't state which way that was.

Q. Whose team did you take?

By Mr. BICKFORD.—We object to that for the reason that it is irrelevant and immaterial and has no bearing on any of the issues in this case.

A. Whose team did we take? Those two gentlemen had a team which belonged to a gentleman called Kreiger. I believe they said it was; and my sister in law drove a horse with a single buggy. That is, I drove it for her. That rig belonged to her and I drove for her up there and back. These other three parties went in a different rig.

Q. Well, where did you go with these parties?

A. Well, we went up to Nine Mile Prairie, up on the Blackfoot.

Q. The same place that you had been?

A. Yes, sir, the same place.

Q. Stopped at the same house?

A. No, I didn't stop at the same house.

Q. Where did you stop?

A. We stopped at a different house there on Nine Mile Prairie.

Q. Did you see Albert Jemison?

A. Did I see him? Yes, sir, I see him before I left there.

Q. Did you know of the fact of these four people that you have testified about going up to make their locations?

(Testimony of J. G. Hendrix.)

A. Did I know of the fact? Did I know of the fact of what?

Q. Yes, sir. The fact of their going up to make their locations.

A. Yes, they went out in the hills with Mr. Jemison. I didn't go with them when he went to show them the land at all.

Q. Was Mr. Griswold there?

A. No, sir, I didn't see him.

Q. So it was simply Albert Jemison this time?

A. Yes, Albert was there; those people did the business with Albert. I didn't see much of them after they had this. I went to the Blackfoot and fished while they were attending to the business. I stopped over night with them.

Q. Did you have very good luck fishing?

A. Oh, got a few squaw fish; didn't have very good luck.

Q. That is what you did when you went up there?

A. Yes, sir, I fished and watered the horses for them at noon while they was gone.

Q. How many days did it take you this time to go up?

A. We started up Sunday and got back the latter part of the week. I wouldn't say whether it was Friday or Saturday.

Q. And how many days were you up there?

A. I think we got up there on one day and stopped over the next day and the next morning we started back again.

(Testimony of J. G. Hendrix.)

Q. When you came down with them did Albert come along?

A. He didn't come with the crowd that I was with; no, sir.

Q. And where did you say that they went after you returned?

A. Where did they go?

Q. You passed through Missoula, did you not?

A. They came into Missoula and stopped in Missoula.

Q. Well, what have you to say as to whether you have any knowledge as to whether they went to file at that time?

A. I think that they went to file. I stopped at the same place they were stopping, but there was some parties there that I was acquainted with and I went with them and walked around on the street. They did the business themselves. I didn't do it for them. I don't know, they may have gone to get the money themselves for all I know.

Q. But you didn't go with them to Cobban's office yourself?

A. I don't believe I was in Cobban's office with any of them at all myself. I don't remember that I was in Cobban's office while I was in Missoula on that trip.

Q. And wasn't present at the time that they proved up?

A. No, sir, I wasn't present when their attorney proved up, if they did prove up.

(Testimony of J. G. Hendrix.)

Q. And you have no personal knowledge as to that?

A. No, sir.

Q. Then afterwards you went back the third time with your wife as I understand you?

A. Why, when I went the second trip my wife was with me. Yes, my wife was with me, but this was the trip after that.

Q. The second trip was the one that you took your wife up with you? A. Yes, sir.

Q. And the third trip was the one you took with your wife's relatives?

A. I didn't take them up; I just went up with them.

Q. Well, you said you took them up. That they didn't know the way.

A. Yes, when I went up with them, when I went to do some fishing. I heard there was pretty good fishing up there, and I wasn't very busy at the time.

Cross-examination.

(By Mr. WALSH.)

Q. Mr. Hendrix, when did you come to the city?

A. To this town?

Q. Yes, sir. A. I came Sunday.

Q. You were subpoenaed to come on Monday, were you? A. Yes, sir, on the tenth.

Q. Who subpoenaed you?

A. Why, Mr. Tom Roll gave me the subpoena. He told me he was authorized by Mr. Gage, to serve the subpoena. He came up to Victor and told me that Mr. Gage

(Testimony of J. G. Hendrix.)

had to stop off at Stevensville and wouldn't get here in time, and he deputized Mr. Thomas Roll.

Q. Well, did your name appear in this subpoena?

A. Yes, sir.

Q. Had you had a talk with Mr. Maynard here, who has been examining here, before you came down here as a witness? A. Before I came to this place here?

Q. Yes.

A. No, I didn't have any talk with him before I came here.

Q. When did he see you?

A. Why, Monday morning at ten o'clock or something like that.

Q. Where did he meet you?

A. I met him in an office adjoining to the clerk's office, I believe it was, up there.

By Mr. MAYNARD.—In the Marshal's office.

A. In the Marshal's office, yes, sir, I met him there.

Q. Did you have a talk with him there?

A. Yes, sir.

Q. Anybody else present with you at the time besides yourself and Mr. Maynard?

A. Yes, Mr. Maynard was there and there were some other persons there.

Q. Have you had any talk with Mr. Maynard subsequent to that time?

A. Yes, sir, I had a talk with him.

Q. When was that?

(Testimony of J. G. Hendrix.)

A. That was on the same day at half-past two o'clock here at this office.

Q. Right in here? A. Yes, sir.

Q. Who was present at that time?

A. These two gentlemen, I believe.

Q. Judge Blake—

A. Yes, sir, they were simply in the room—yes, sir, they were in the room but they did not hear the conversation.

Q. You had a talk with Mr. Maynard at that time?

A. Yes, sir.

Q. Mr. Maynard asked you about the facts concerning the location of the claims and that sort of thing?

A. I believe he asked me in regard to how the business was transacted and so on, something of that kind. I don't know as he asked me to state any definite facts. He just talked with me in regard to the matter.

Q. You told him about the matter as you have stated upon the stand here, in substance?

A. Yes, sir, I related it to him.

Q. And did you have any other talk with him; subsequent to that time? A. No, that is the last time.

Q. As I understand you, you had a talk with Mr. Cobban also, did you not, Mr. Hendrix?

A. Yes, sir, I had a talk with Mr. Cobban.

Q. Well, when did that take place?

A. Why, that was yesterday, I believe.

Q. Yesterday, you say?

A. Yes, sir, yesterday.

(Testimony of J. G. Hendrix.)

Q. And did you enter into the details of the matter with Mr. Cobban? A. Oh, not particularly, no.

Q. A few words about it, perhaps?

A. Yes, a few words about it. We talked a few words about it.

Q. Well, Mr. Cobban didn't endeavor to persuade you to say anything but the truth about the matter, did he?

A. No, he said all he wanted was to state the facts, tell the truth, that is all he said to me.

Q. You testified also that you saw Mr. Cobban to-day during the noon hour?

A. Yes, sir, I saw him to-day during the noon hour.

Q. Where did you see him?

A. I met him at the Cosmopolitan. He came up there.

Q. Have any talk with him about the facts in this case?

A. Oh, no. I didn't have any talk about the facts. I wasn't with him but for a very short time—spoke a few words.

Q. There was nothing said about the facts or your testimony? A. No, sir, nothing.

JOHN G. HENDRIX.

Subscribed and sworn to before me, this thirteenth day of March, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

LEVI B. CYR, a witness called by the complainant, being first duly sworn by the Examiner, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Where do you live, Mr. Cyr?

A. I live in Kalispel at present.

Q. What is your business? A. A butcher.

Q. What is you age? A. Thirty-three.

Q. You are a butcher, you say? A. Yes, sir.

Q. Are you a married man, Mr. Cyr?

A. I am not now at present; my wife is dead?

Q. What was her name?

A. Her name was Cyr, also.

Q. What was her first name? A. Ursula.

Q. Well, do you know Vital Cyr? A. Yes, sir.

Q. Who is he? A. He is a brother to my wife.

Q. A brother to your wife?

A. Yes, sir, he is a brother to my wife.

Q. Where does Vital live, Mr. Cyr?

A. Well, he was around Missoula the last time I heard of him. He was at the hospital.

Q. In the hospital?

A. Yes, sir, I seen some account of in the paper.

Q. Well, how long is it since you have seen him?

A. Oh, it is a little over a year. I think it was a year this last month.

Q. Since you have seen him?

A. Yes, sir, I haven't been in Missoula since last April or in May sometime.

(Testimony of Levi B. Cyr.)

Q. This last April? A. Yes, sir.

Q. Where were you living, in Missoula at that time?

A. Why, yes, I had been making Missoula my headquarters until the time I moved up into the Flathead.

Q. Did you make any entry under the Stone and Timber Act? A. Yes, sir, I did.

Q. Do you know where you were living then?

A. I was living in Missoula.

Q. What was you doing there?

A. In Missoula?

Q. Yes, sir.

A. I wasn't living right in Missoula, but my occupation was logging. I had some horses and a logging outfit working out at different for somebody, and at other times for myself.

Q. Whereabouts were you living?

A. Well, I lived a while on Rock Creek, and at the time I made an entry on that land I was just through putting up a crop on my father's farm in Grass Valley.

Q. Just through what?

A. Putting up a crop on my father's ranch.

Q. Where was your father's ranch?

A. In Grass Valley.

Q. Whereabouts was it? A. Grass Valley.

Q. Yes, where was that?

A. That was a little ways, about nine miles west of Missoula, I should think, or southwest.

Q. How long had you been living near, or in and about Missoula at the time of this entry?

(Testimony of Levi B. Cyr.)

A. Well, I had been around Missoula off and on for sixteen years.

Q. Did you say that you were thirty years old?

A. Thirty-three years of age, yes, sir.

Q. Your father lives, you say?

A. Why, he don't live there now, but my mother is down there on the ranch near Grass Valley; Missoula is her postoffice address, etc.

Q. And during this last sixteen years, or thereabouts, how long—how much of that time have you spent at home?

A. Oh, I spent a good deal. I was—well, the first time I came to Missoula I stayed about three years—stayed about home, but worked out for wages once in a while. Then I spent about four years out in the Flathead, and then I came back to Missoula again. That is, with my folks.

Q. Doing odd jobs? A. Once in a while, yes.

Q. What real estate of any kind did you have at the time you made this entry under the Stone and Timber Act? A. I don't think I had any at that time.

Q. Well, what personal property?

A. Well, I had horses, and a logging outfit.

Q. At that time? A. At that time.

Q. Your wife was living at that time?

A. Yes, sir.

Q. You have—where were you living then?

A. Well, I was living at Rock Creek, at a place they call Quigley. I also stated a little while ago that I

(Testimony of Levi B. Cyr.)

didn't have any personal property, but I did have some personal property. I didn't have any real property. I owned a house and lot there at Quigley, though, but then I don't call that real estate now.

By Mr. WALSH.—Real estate, you mean you had a lot there at that time?

A. Yes, sir, I was running a butcher shop when the place was booming.

Q. Where was that?

A. At Quigley, that is in Granite County.

Q. While the place was booming you had a butcher-shop there? A. Yes, sir.

Q. And you owned that?

A. I owned a lot there and a shop.

Q. A lot and a shop? A. Yes, sir.

Q. How much did you pay for it?

A. Oh, that property cost me at the time about nine hundred dollars.

Q. Did you pay that much for it?

A. The property was pretty high there. I bought the lot and put up the building myself.

Q. How much did you pay for the lot?

A. I paid a hundred dollars for it.

Q. Paid a hundred dollars for the lot and put up a building yourself? A. Yes, sir.

Q. You don't own it now, do you? A. I do.

Q. You own it now?

A. Yes, sir. I own it now, but I don't think it is any good.

(Testimony of Levi B. Cyr.)

Q. So you don't count it? A. No, sir.

Q. Is there any place there at all now?

A. Oh, no, probably a couple of families living there.

Q. You have a logging outfit, you say?

A. Yes, sir.

Q. What was that? A. Yes, sir.

Q. What personal property do you have in connection with that business? A. Horses.

Q. How many horses?

A. Oh, I had as high as eight or ten head, but at the time I took the timber claim I only had two good teams.

Q. Had two good teams?

A. Yes, and an outfit that I could work with chains, sleighs, cant-hooks, and so forth.

Q. Is this your signature? (Counsel hands witness paper.) A. Yes, sir.

Q. I show you timber and stone sworn statement. (Counsel hands witness sworn statement in the entry of the witness under the Stone and Timber Act.) And ask you if you recognize that as your signature?

A. Yes, sir, I recognize that as my signature.

Q. Land office of Helena, Montana, September 25th, 1899, I Levy B. Cyr. That is your signature, is it not, Mr. Cyr, and that refers to you? A. Yes, sir.

Q. City of Missoula, county of Missoula, State of Montana. I, Levy B. Cyr, desiring to avail myself of the provisions of the act of Congress of June 3d, 1878, for the purchase of the northeast quarter of section

(Testimony of Levi B. Cyr.)

eighteen, township 16 north, of range 14 west, in the district of lands subject to sale at Helena, Montana. Endorsed on the margin are the words "Canceled and relinquished as to the south half of the northeast quarter of section eighteen, township 16 north, range 14 west." See claimant's testimony in final proof. Now, Mr. Cyr, this was on the 25th day of September, 1899, that you made this sworn statement?

A. I think it was, I don't remember the date.

Q. Do you remember the fact of your going up into the Blackfoot country? A. Oh, yes.

Q. How long was it before you filed this statement that you went up there?

A. Well, I went up in the Blackfoot country and was gone about three days and a half, and I came back and stayed a day or two in Missoula and then took the train and came over here.

Q. Who did you come up with?

A. I came up with this brother in law of mine.

Q. Who was that? A. That was Vital Cyr.

Q. You two went up together, did you?

A. Yes, sir.

Q. Were you two together while you were up in the mountains? A. Yes, sir.

Q. And returned together?

A. Yes, sir, and returned together.

Q. Did you both go to the land office together?

A. Yes, sir.

Q. And both filed? A. Yes, sir.

(Testimony of Levi B. Cyr.)

Q. How long were you up there?

A. Oh, it took us about three days and a half from Missoula until we returned. About four days altogether.

Q. What? A. Close on to four days.

Q. Coming and going? A. Yes, sir.

Q. What point did you go to?

A. Went up the Clearwater.

Q. Who did you see up there?

A. Mr. J. B. Seeley.

Q. Mr. Seeley?

A Yes, sir, I think that is his name, J. B. Seeley.

Q. Where did you stop?

A. Stopped over night with him at his home.

Q. Did you go home then?

A. I went home, yes.

Q. You knew of Mr. Seeley, did you?

A. Yes, sir.

Q. Did you see Mr. Griswold while you were up there?

A. No, sir, I didn't see Mr. Griswold up there.

Q. Who is this Mr. Seeley?

A. Why, he a gentleman I think that was working for—a range rider, you might call him. He had some kind of a job from the government.

By Mr. BICKFORD.—You mean a forest ranger?

A. Yes, sir.

Q. Had you ever met him before you went up there?

A. No, not that I know of.

(Testimony of Levi B. Cyr.)

Q. How long—how did you happen to know him?

A. I knew him.

Q. Who told you of him?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial, and having nothing to do with the issues in this case.

A. I have been around the Blackfoot a good deal and I know pretty nearly everybody there.

Q. You had been up in the Blackfoot before?

A. Yes, I should say I had.

Q. How long was it before—just before you went up this time that you was up there before?

A. Oh, I was up in the Blackfoot off and on for several years.

Q. Well, do you remember when you was up there just before you went up there to make this location?

A. Oh, it must have been around about the Fourth of July, somewhere about that time.

Q. What is that?

A. About the Fourth of July, sometime.

Q. What did you go up there for?

A. Oh, I was up there taking a bunch of cattle up there.

Q. Taking a bunch of cattle? A. Yes, sir.

Q. When were you up there, just before that?

A. I don't remember when it was.

Q. Can't tell that? A. No, sir.

Q. So then, it was between the time that you returned in July when you took up this bunch of cattle

(Testimony of Levi B. Cyr.)

and the 25th of September that you and Vital went up there? A. Yes, sir.

Q, —That you heard people talking about taking up claims under the Stone and Timber Act?

By Mr. WALSH.—We object to that for the reason that it is not the testimony of the witness and assumes a state of facts which has not been testified to by the witness or anyone else.

A. I heard about that before I took up the cattle—before I took the cattle up there.

Q. But you did nothing towards making a location at that time?

A. Oh, I was trying to get onto a piece of land, but didn't have any opportunity to do it. I was a looking for a piece of land all that summer. I was inquiring around so that I could get a parcel of land.

Q. Whereabouts were you in Missoula?

A. I was working east of Missoula with my outfit at the time. That is, when I started with the cattle I left my outfit in the camp there working.

Q. How far from Missoula was that?

A. Oh, I think something like twelve miles.

Q. In which direction? A. East of Missoula.

Q. Now, who was there in that country during that time that would give you any information as to claims up there in the Blackfoot country?

A. Why, I was acquainted with a gentleman by the name of Al Rodgers, and he told me that he thought there might be some land up there yet. That is about

(Testimony of Levi B. Cyr.)

all. He was working in the camp at the time I was up there.

Q. That is about all?

A. That is about all. In fact, I didn't know whether there was any loose land up there yet or not.

Q. What information had you received then that the facts were as you said that led you and your brother in law, Vital, to go up there at the time you did?

A. Nothing whatever.

Q. You had no knowledge or information?

A. No, sir.

Q. But you just started up there?

A. We just got through putting up the crop, and we just started up for a few days to see what we could do.

Q. Had you met Mr. Cobban then?

A. No, sir.

Q. Or Mr. Catlin?

A. No, sir, I knew Mr. Catlin, but Mr. Cobban was a stranger to me.

Q. Mr. Catlin was a stranger to you?

A. No, Mr. Cobban.

Q. Was Mr. Catlin a stranger to you?

A. No, I knew Mr. Catlin by sight, but that is all.

Q. You had no conversation with him, with regard to this matter? A. No, sir.

Q. Did you know Mr. Griswold?

A. Yes, sir, I knew Mr. Griswold.

Q. And you hadn't seen him? A. No, sir.

Q. Or Albert Jehison?

(Testimony of Levi B. Cyr.)

A. I don't believe I know Mr. Jemison.

Q. Or Mr. Kilburn? A. I know Mr. Kilburn.

Q. Had you seen him?

A. Had seen him, but I never spoke to him about the timber, or anything of that kind. I saw Mr. Kilburn at the time I came up from the Blackfoot with those cattle. We came down to Bonner together.

Q. You came down to Bonner together?

A. Yes, sir.

Q. You and Mr. Kilburn? A. Yes, sir.

Q. How long a distance did you come together?

A. Oh, we must have rode about thirty—between thirty and thirty-five miles together.

Q. You and Mr. Kilburn together?

A. Yes, sir.

Q. Anybody else with you?

A. No, sir, not that I remember of.

Q. You rode horseback?

A. No, sir, we drove some horses down.

Q. You drove some horses down? A. Yes, sir.

Q. You were on horseback?

A. I was on horseback and so was he.

Q. During that ride of thirty miles to the place you have named you had no conversation with Mr. Kilburn in regard to people coming up there and making locations? A. Not that I remember of.

Q. Will you swear that you did not?

A. Yes, sir, we were talking about horses a good deal, but not particularly about the timber.

(Testimony of Levi B. Cyr.)

Q. So you had no information from these people or anybody else? A. Not at that time.

Q. At the time that you and Vital went up there, did you know of the fact that people were taking up claims under this act?

A. Oh, I knew that people were taking up claims under that act.

Q. Well, that is what I was asking you about, at the time, whether you knew that people were taking up claims about that time, or whether you had heard about that? A. I heard it in the spring.

Q. You heard it in the spring? A. Yes, sir.

Q. Where were you when you heard about it in the spring?

A. Must have been in Missoula or around the logging camp.

Q. What did you say?

A. I heard there was such a right as that, that people could take up a piece of land under the Stone and Timber Act.

Q. And that they were doing it?

A. Some of them, I expect.

Q. Well, you had hear that, hadn't you?

A. Yes, sir, I had.

Q. Can you recall now any person that told you that?

A. No, sir, I cannot except this man, Al Rodgers, that I was talking about. He was working in some camp with my horses there.

Q. No, I am not asking you about that. I am ask-

(Testimony of Levi B. Cyr.)

ing you if you can recall the names of any persons that told you of the fact that people could take up claims under the Stone and Timber Act?

A. No, sir, I cannot remember.

Q. Can't you remember one?

A. No, not at the time.

Q. Can't remember one? A. No, sir.

Q. Well, can you state whether or not it was common rumor in Missoula at the time?

By Mr. BICKFORD.—We object to that for the reason that it is irrelevant and immaterial to the issues in this case, and that it is hearsay, and further that it is leading.

Q. Go on, Mr. Cyr.

A. I heard so many taking about it, but I don't remember the names, I wouldn't be able to recall them.

Q. You heard so many talking about it that you wouldn't be able to call their names? A. No, sir.

Q. Well, what was the substance of what you heard so many persons talking about that you cannot now recall their names?

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial and has no bearing upon the issues in this case, and further that it is hearsay and also leading.

Q. What was it that you heard, Mr. Cyr? Go on and state it.

By Mr. WALSH.—We object to that for the reason

(Testimony of Levi B. Cyr.)

that it is irrelevant and immaterial, and has no bearing upon the issues in this case, and further that it is hearsay and also leading.

A. Well, I heard that there was such a right as that in existence and that people could take up land under that act, that is all.

Q. Is that all that you heard?

A. Why, yes, sometimes I would hear that a party had got a claim somewhere in town, but that is all I can say.

Q. Was there anything said about what they were going to do with it after they got it? A. No.

Q. Nothing said about that?

A. Well, no, they didn't tell me their business, and I didn't ask them.

Q. They wouldn't tell you their business and you wouldn't ask them?

A. In fact, I don't know of anybody right now. I couldn't recall their names—the names of all persons that have had a piece of land under that act before I went up the Blackfoot. That is all hearsay, however, that is all.

Q. All hearsay? A. Yes.

Q. And in the hearsay there was not anything embraced in that hearsay as to what the people who were taking up claims were going to be paid for them, was there?

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial, and further upon

(Testimony of Levi B. Cyr.)

the ground that it has no bearing upon any of the issues in this case, and that it is hearsay testimony.

A. No, sir.

Q. You never heard that?

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial, and further upon the ground that it has no bearing upon any of the issues in this case, and that it is hearsay testimony.

A. No, sir.

Q. After you and Vital had started up into the mountains and left your home to take up claims, what was your intention in connection with the land?

A. My intention was that if I could get a claim I would locate it myself, and that I would put my outfit there during the winter, and Vital would take charge of it. In fact, I didn't only go there for that purpose, but I was going up there for the purpose of getting a small tract of land, and I was going to get a contract up there if I could, simply that.

Q. Simply what?

A. Simply getting a contract up there.

Q. Now, you say you were unable to say who this man Seeley was?

By Mr. BICKFORD.—He has already stated who Mr. Seeley was. He said he was a forest ranger.

A. I have stated—

Q. Do you say you had ever seen him before?

A. No, sir, I had heard of him, but had never seen him.

(Testimony of Levi B. Cyr.)

Q. But did you see him up there, or did you hear of him there?

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial and hearsay.

A. From parties in the Blackfoot.

Q. You had heard of him from parties in the Blackfoot? A. Yes, sir.

Q. Who were the parties in the Blackfoot that told you about him?

A. Oh, there might have been several, I don't remember.

Q. Well, I asked you who the parties were that told you.

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial and hearsay.

A. I don't know, I cannot tell, everybody knew Mr. Seeley, and I knew a good many people up in the Blackfoot that knew Mr. Seeley, Mr. Al Rodgers was one that told me that Mr. Seeley lived up there at a place they called Seeley Lake.

Q. Where is he living now? A. At home.

Q. At Seeley Lake? A. Yes, sir.

Q. Had any people up in the Blackfoot ever told you to go and see Seeley that you cannot remember their names?

A. There was nobody told me to go and see Seeley.

Q. I understand that there had?

A. I don't think that they did.

(Testimony of Levi B. Cyr.)

Q. Had you heard of people there in the Blackfoot country that told you about Mr. Seeley?

A. Yes, sir.

Q. Well, that is the same thing. They told you about Mr. Seeley's business?

A. They didn't tell me anything about his business except that he was a man well acquainted up in the Blackfoot country, and was a forest ranger or whatever you might call it.

Q. And as a result of what they told you, you went and saw Seeley?

A. I went up in the Clearwater, and I was—and that was the only place that I could camp at over night.

Q. Who put you on this location?

A. Mr. Seeley.

Q. How far was it from where you camped?

A. Oh, it is only a few miles, probably four or five miles from his place.

Q. Four or five miles from his place?

A. Yes, sir.

Q. Who went with you?

A. Nobody but us three.

Q. You and Vital and Seeley? A. Yes, sir.

Q. Was Vital's location near yours?

A. Adjoining.

Q. It was adjoining? A. Yes, sir.

Q. Then you came back to Missoula the next day as I understand you?

A. I didn't come back the next day.

(Testimony of Levi B. Cyr.)

Q. Well, when did you come back?

A. Well, it takes two days to go up and about that to come back. We didn't come back the next day.

Q. You understood what I said? A. Yes, sir.

Q. You are not trying to be smart?

A. No, sir, I think I am just testifying to the best of my knowledge.

Q. Well, now, during this time that you were up there, how many hours were you with Mr. Seeley?

A. With Mr. Seeley?

Q. Yes, sir.

A. I camped with him one night.

Q. You camped with him one night?

A. Yes, sir.

Q. And that was before you and Vital went to this location? A. That was the day previous.

Q. And the next day you and Seeley and Vital went to this location? A. Yes, sir.

Q. And the next morning you started for home?

A. No, we didn't start that morning. We got there, that is, we looked over the ground—well, the claim that I took in must be five or six miles from Mr. Seeley's place, which, if I had gone back to Mr. Seeley's place and camped that night it would have been that much out of the way. That was at Clearwater, and there was no necessity of going back five or six miles.

Q. So that you and Vital spend part of one day on your location?

A. Yes, something like that.

(Testimony of Levi B. Cyr.)

Q. How many times have you been back on your claims?

A. I have not been back on the claims once. I was right close to it, but I didn't go back onto the claims.

Q. Now, you state to the stenographer, Mr. Cyr, whether Mr. Seeley had at the time you and Vital went there—what Mr. Seeley did when you went up there.

By Mr. BICKFORD.—We object to that, for the reason that it is irrelevant and immaterial to the issues in this case.

A. Nothing but look over the timber and the locations and one thing and another.

Q. When did you see him again?

A. Mr. Seeley?

Q. Yes.

A. I seen him about, oh, probably six weeks after that.

Q. Where was that?

A. I met him on the road to the Blackfoot. I was traveling in the Blackfoot country pretty much that fall. I cannot remember just when it was, or where.

Q. Now, you said that there was no one with you except you, Mr. Cyr and Vital on this day.

A. That is all.

Q. That is all. Did you see him again before you filed? A. Yes.

Q. Before you filed, I mean?

A. Yes, I seen him two or three times.

Q. Where did you see him?

(Testimony of Levi B. Cyr.)

A. I seen him once in December in Missoula, and I think I met him a couple of times in the Blackfoot.

Q. You saw him once in Missoula? A. Yes, sir.

Q. Before you filed? A. Yes, sir.

Q. When did he give you the descriptions of the land?

By Mr. BICKFORD.—We object to that for the reason that it assumes a state of facts that has not been testified to by the witness. That is to say that Seeley ever gave the witness a description of the land.

Q. Go on, Mr. Cyr.

A. The description of the land?

Q. Yes, sir.

A. Well, the only description of the land that he gave me was one when I was locating or looking at the claim.

Q. On that day?

A. Yes, sir, he told me the section it was on.

Q. Told you which section it was on?

A. Yes, sir.

Q. Is thaf all he told you?

A. Yes, sir, that is all he told me, which section it was on, and that piece of land was loose, it wasn't taken up; that is, as I remember it.

Q. Did he give you a paper with the description on it?

A. No, sir, not that I remember of.

Q. Did he give Vital one?

A. No, sir, I don't remember that he did.

Q. Well, you won't say but what he did, will you?

(Testimony of Levi B. Cyr.)

A. Well, I say I don't remember of him doing it. I am not positive that he didn't, though.

Q. Very well, under the circumstances that you have stated, then, if he didn't give you a paper with the description of this location on when you went to the land office, how did you know what description to give them?

A. Well, he told me which it was, and which number of the section it was that he thought would be the best for me.

Q. Well, under the circumstances, as you have related them, if he did not give you a paper with a description of this location on it, how did you know what description to give in when you went to the land office?

A. I don't remember that he gave me a description on any paper. He told me it was section eighteen, and gave me I think it was the southwest quarter and the northwest half. I know I looked over the map before I came here to file on it and checked it up. I checked it up on the map and the whole section was loose.

Q. Who did you come to Helena with?

A. Nobody to file.

Q. Made a filing alone? A. Yes, sir.

Q. And you went to Helena alone, then?

A. Yes, sir.

Q. Who attended to your business?

A. Mr. George D. Greene, I think his name was.

Q. The register of the land office here?

A. Yes, sir.

Q. Did you have any contract of your own?

(Testimony of Levi B. Cyr.)

A. No, sir, I didn't have an attorney of my own.

Q. Well, now, when you went to Mr. George D. Greene's office at the public land office to file, you say you carried the description of your land with you?

A. I didn't carry the description to him, but I got my filing papers made out in Missoula.

Q. You got your filing paper made out at Missoula?

A. Yes, sir.

Q. Who made it out for you? A. Mr. Catlin.

Q. Oh, Mr. Catlin?

A. Yes, the filing paper was made out by Mr. Catlin. I don't know, but I think Mr. Catlin made it out.

Q. And you brought that paper made out by Catlin from Missoula to the Helena land office?

A. Yes, sir.

Q. It was the same way with Vital?

A. Yes, sir.

Q. Well, now then, state how your happened to go to Mr. Catlin. A. How I happened to go there?

Q. Yes, sir.

A. I went to Mr. Densmore's office to look over the map.

Q. That was Cobban and Densmore's office?

A. I think it was.

Q. Mr. R. M. Cobban and his partner, Mr. Densmore?

A. Yes, sir, I think he told me that section was vacant, and I talked with him about it and looked at the map to find out whether it was or not, and he told me that it was. I don't know who told me to go to have

(Testimony of Levi B. Cyr.)

Mr. Catlin make out my papers. I don't know about that, but I went there and he made them out for me and didn't charge me anything.

Q. Didn't charge you anything?

A. No, sir; I offered to pay him, but he said it was all right.

Q. You swear now that you don't know who told you to go to see Mr. Catlin?

A. I say I don't remember whether it was Mr. Cobban or Mr. Densmore. I cannot remember about that.

Q. But you swear you don't know how you happened to go to Mr. Cobban's office?

A. Yes, sir, I went there to look over the map.

Q. You went there to look over the map?

A. Yes, sir, they had a map of the Clearwater there.

Q. Well, how did you know it?

A. Oh, I knew it.

Q. Who told you about that?

A. Nobody; I knew about it. I knew Mr. Densmore had a map up there of the Clearwater country. I knew Mr. Densmore, but I didn't know Mr. Cobban at the time. I went to the Missoula land office to look at the map, but I couldn't find anything there, and then I went to look at the map of the Clearwater up in Cobban and Densmore's office.

Q. Well, you and Vital came there with your papers drawn up alone? A. Yes, sir.

Q. What witnesses did you state, or did you name? What persons did you name as your witnesses?

(Testimony of Levi B. Cyr.)

A. We named Mr. Seeley.

Q. Well, who else did you name?

A. Mr. George Hammond and Mr. Billy Boyd.

Q. And Billy Boyd? A. Yes, sir.

Q. That is three? A. Yes, sir.

Q. And who was the fourth one?

A. I know Vital Cyr was one. He was named as one.

Q. Who gave you those names?

A. Nobody. I knew these people. I was well acquainted in that country. I asked Mr. Seeley if I could use his name, and he said I was perfectly welcome.

Q. Named these persons as witnesses and told them you had done so? A. Yes, sir.

Q. Where did they live?

A. Mr. Seeley lives at Clearwater, and Mr. George Hammond lives at Ovando.

Q. George Hammand lives at Ovando?

A. Yes, sir.

Q. What does he do?

A. He is a rancher. Was a logger at one time, and Mr. Billy Boyd was a rancher and was also a logger.

Q. How far do they live from this location?

A. Well, Mr. Seeley lives, I think, about five or six miles, and Mr. George Hammond lives probably about fifteen miles, and the other, Mr. Boyd, lives a little bit closer.

Q. A little bit closer than fifteen miles from this location?

A. Yes; I cannot tell you just exactly the number of

(Testimony of Levi B. Cyr.)

miles, although I have traveled over that country so much, but I couldn't state exactly the number of miles.

Q. Did you tell them about being witnesses for you?

A. I don't think I ever told Mr. Hammond, but I told Mr. Boyd.

Q. Whereabouts? A. At Ovando.

Q. After you had named him as a witness you told him that you had done so? A. Yes, sir.

Q. And at the same time; and these three men had been with you, or were with you, at the same time when you made this location?

A. Three of them were.

Q. With the single exception of Mr. Seeley, who went with you and your companion, Vital? A. Yes, sir.

Q. Those other men were not present?

A. Mr. Hammond, when I told him I would use his name, he told me it was all right, and that he was acquainted with the land.

Q. But you named him after you had filed?

A. No, I named him, my filing papers did not.

Q. Certainly, then, you named him on your filing paper, but you told him you had used his name a long time after you had filed?

A. No, if I remember right, when I was coming back from that claim I met him on the road and asked him about using his name.

Q. And the other man you never spoke to?

A. I don't remember.

(Testimony of Levi B. Cyr.)

Q. Well, how did you come to use his name and get the particular description of land?

A. Well, because I knew he was well acquainted with the land.

Q. With that particular description?

A. Yes, sir.

Q. What was there about that particular description of the land, and the only time you had ever visited it was that day that you know what you did about it?

A. Well, he was an old timer in the country and was familiar with it and the timber on it, and knew it was more valuable for the timber than anything else.

Q. You knew he had no knowledge of the country except a general knowledge that it was a mountainous country and there was timber there.

A. That was all.

Q. Still, with that knowledge, as you say, you named him as one of your witnesses. A. Yes, sir.

Q. Now, is it not true that Mr. Seeley gave you the description of the land and the names of the witnesses.

By Mr. WALSH.—We object to that as irrelevant and immaterial.

A. I don't remember.

Q. You don't remember?

A. I know I spoke to him about Mr. Hammond, but I think that I spoke of Mr. Boyd, and he said that they were two good men and were well acquainted with the land.

Q. But you went away when you left Seeley, and he

(Testimony of Levi B. Cyr.)

gave you the names of the witnesses, and the description of the land? A. I don't remember.

Q. At that time, you was not either a citizen of the United States or a naturalized citizen, were you?

A. I was a naturalized citizen; my father was a citizen before I took out my paper, but I took them out just the same.

Q. You did take out your papers? A. Yes, sir.

Q. After you filed or before?

A. Why, before I filed.

Q. Now, then, I read from the original papers, "United States land office, Helena, Montana, December 18th, 1899. Received of Levy B. Cyr, the sum of two hundred dollars, being in full for the north half of the northeast quarter of section eighteen, township 15 north, range fourteen west, Montana Meridian, containing eighty acres and no hundredths.

Q. Do you remember that money being paid into the land office? A. Oh, the day that I proved up?

Q. The day that you proved up. A. Yes, sir.

Q. How much money was it?

A. Well, I only proved up on eighty acres of land.

Q. You entered one hundred and sixty, didn't you?

A. Yes, but I think I have got only eighty acres.

Q. You got only eighty acres; you cut off eighty?

A. Yes, sir.

Q. Well, state the reasons for that, please.

A. Well, because the eighty acres that I cut off I didn't think it was worth while to pay any money on it.

(Testimony of Levi B. Cyr.)

Q. You located your original location and it was a hundred and sixty acres, wasn't it? A. Yes, sir.

Q. And you filed for that amount? A. Yes, sir.

Q. And after your filing you say then you cut off half of it? A. Yes, I think I did.

Q. Well, when was that?

A. The day I filed—the day that I proved up.

Q. You cut off half of it the day that you proved up?

A. I think so.

Q. When did you determine to cut off the half?

A. I determined to cut off the half because I told Mr. Seeley—

Q. No, wait a minute; when did you determine that, the day that you proved up?

A. No, it was a few days before.

Q. Well, about how many days?

A. Well, probably three or four days before. It was the day, I think, that I seen Mr. Seeley the last time before I proved up.

Q. Well, tell us about that, please.

A. Well, because as I understood, Mr. Seeley was well acquainted with the land, and I told him when I left the Blackfoot if he would like to look over the land again, and he told me he looked it over after and he told me that there was half of it that he didn't think was worth while to pay any money on.

Q. He told you that, did he? A. Yes, sir.

Q. Do you remember where he was when he told you that?

(Testimony of Levi B. Cyr.)

A. I think he was in Missoula at the time.

Q. In Missoula previous to your coming here to the land office? A. Yes, sir.

Q. Two or three days previous?

A. Yes, I think it is more than that. I think it is something like ten days.

Q. Oh, ten days before the time came to your coming here to Helena to prove up you saw Mr. Seeley?

A. Yes, sir.

Q. And Mr. Seeley told you—ten days—

A. Ten days; yes, it is worse than that—it is twenty days.

Q. Twenty days? A. Yes, sir.

Q. Mr. Seeley told you that half of the land that you had located wasn't worth while to take up?

A. Yes, sir.

Q. Whereabouts was he when he told you that?

A. I think he was right there in the Missoula hotel.

Q. In the Missoula hotel?

A. Either there or at the depot, I cannot tell which.

Q. The certificate is that $200 was paid into the land office? A. Yes, sir.

Q. Do you remember who came to Helena with you at the time you proved up?

A. Nobody but me and Vital.

Q. When you proved up? A. Yes, sir.

Q. You came together, did you? A. Yes, sir.

Q. Not with anybody else?

A. No, not on the same train that I know of.

(Testimony of Levi B. Cyr.)

Q. Did you meet anybody after you got here?

A. I met Mr. Cobban here.

Q. You met Mr. Cobban here? A. Yes, sir.

Q. Well, weren't your witnesses here?

A. Yes, sir.

Q. Who were they that were here?

A. Mr. Seeley, I think he came in a day after; that is, the day after I did.

Q. Came in the day after you did? A. Yes, sir.

Q. So that Mr. Cobban and Mr. Vital Cyr and you and Mr. Seeley were here at the time you proved up?

A. Yes, sir; when Mr. Seeley was here I had gone back to Missoula. He was a day behind, I think. He was delayed on the road, and came in here, being away from the railroad, and Mr. Greene told us that if he would get here at a certain time, why his testimony would be all right, and he did get here.

Q. That is so far as you know? A. Yes, sir.

Q. Did Vital prove up on his full claim?

A. I think he did; I ain't sure.

Q. You think he did?

A. Well, I think he did; I ain't sure.

Q. Who paid this money into the land office?

A. I don't know who did, except Mr. Cobban. I spoke to him about making me a loan.

Q. And you supposed that he paid this $200 into the land office? A. Yes, sir.

Q. Did you afterwards sell this same land to Mr. Cobban?

(Testimony of Levi B. Cyr.)

A. I sold after I proved up—some time after I proved up—to him.

Q. How long a time?

A. I cannot remember when I sold without I was going to look at the papers. I saw him and I told him that if he wanted to buy I would sell because there was no chance for me to log it now.

Q. Who was with you when you sold to him?

A. I think Vital Cyr sold his claim the same time that I did.

Q. You say that Vital sold to Mr. Cobban on the same day?

A. Oh, I don't know if he sold on the same day, but I think he sold about the same day that I did.

Q. And after you found out that you couldn't use this land for logging purposes you then concluded that you would sell to Mr. Cobban?

A. Yes, sir, or sell to anybody if I could get my price for it.

Q. Do you remember where you were after you proved up here in Helena? A. Where I was?

Q. Yes.

A. I went back to Missoula.

Q. How long did you stay here? A. In Helena?

Q. Yes.

A. I think it was two days at the time I proved up.

Q. You stayed here two days? A. I think so.

Q. What did you do here during those two days?

A. Nothing except proving up on my land.

(Testimony of Levi B. Cyr.)

Q. You spent two days here?

A. Well, we couldn't get away that night—no, we didn't stay here two days. We came here on the night train and we proved up the next day and I took the train the next night. I think that is the way it was.

Q. Was there a night train out from Missoula here?

A. Well, it came in here at night and went out after dinner; some time in the afternoon.

Q. You say you stayed here two days?

A. No, it wasn't two days; I think I left either on the next day after I came and proved up in the afternoon, or the next night.

Q. Then you went to Missoula? A. Yes, sir.

Q. Then where did you go?

A. At the time I was traveling on the road. I put my horses to work and I was traveling.

Q. Well, you was traveling on the road?

A. Yes, sir.

Q. How many days did you travel on the road before you sold the land?

A. I don't remember. I know it was some time after I proved up.

Q. Well, I know. Of course it was some time after you proved up. Give us your best judgment as to the number of days, weeks and month. Give us your best recollection under oath.

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial and the papers themselves are the best evidence of the fact, and further, if

(Testimony of Levi B. Cyr.)

the witness is to be interrogated in concerning the execution of the deed, the time it was executed, etc., he has the right to have his memory refreshed as to that by showing the witness the instrument mentioned.

By the EXAMINER.—Yes, he has that right under our statute. He has the right to examine the paper when interrogated with reference to its contents.

Q. You say you cannot remember? A. No.

Q. But it was during this time after you had proved up and after Mr. Cobban had paid this money into the land office for you, between that time and the time that you sold to him that you came to the conclusion that this land that you had bought was unfit for logging?

By Mr. BICKFORD.—He hasn't testified to that yet. The witness hasn't so testified, and we object to the question for the reason that it is misleading and that it is intended to mislead the witness, and is misleading the witness in his answer thereto.

A. I never had any idea that the land was unfit for logging. It was just because I couldn't get the contract that I wanted to.

Q. That was the reason, was it?

A. Yes, that was the reason that I put my horses to work.

Q. What contract was it that you calculated to get?

A. I was expecting to put some logs on the river for the Blackfoot Milling Company.

Q. You were expecting to put some logs onto the river

(Testimony of Levi B. Cyr.)

for the Blackfoot Milling Company? A. Yes, sir.

Q. How far was this land that you have located, from the Blackfoot?

A. Oh, probably about sixty miles or over.

Q. Sixty miles from the river?

A. Oh, from the river?

Q. Yes.

A. No, oh, no; it was only two and a half or three miles from the river.

Q. But had you heard after you proved up and before the time you sold to Mr. Cobban, about this contract?

A. About this contract I wrote once to Mr. Vogel at Bonner and asked him if there was a chance to get logs to run.

Q. Mr. Vogel? A. Yes, sir.

Q. Mr. George Hammond was to log that winter, but he told me after that that he didn't log and that he wouldn't be given a chance to work out any logs.

Q. How long was it after you returned from Helena before you wrote to Mr. Vogel?

A. I think I wrote to Mr. Vogel about logging, about doing some logging for him and I know I had spoke to Mr. George Hammond about logging too early in the fall. That was before I returned from Helena, before I came to Helena.

Q. That you wrote to Mr. Vogel? A. Yes, sir.

Q. When did you get a reply?

A. Oh, a few days afterwards.

Q. How many days afterwards?

(Testimony of Levi B. Cyr.)

A. Probably a week.

Q. After you returned from Helena?

A. Oh, after I returned from Helena? Why, no; I wrote to Mr. Vogel before I came to Helena, early in the fall, about doing some logging on the river.

Q. Oh, very well; did you get an answer from him?

A. Yes, sir.

Q. When did you get that answer?

A. A few days after I wrote to him.

Q. And then you came to Helena?

A. Yes, before I came to Helena.

Q. To prove up? A. To prove up.

Q. What was that letter?

A. That letter told me that he couldn't give no definite answer about logging, that all the old loggers were out of work and the camps were shut down at the time, and I seen that I didn't stand no show.

Q. You saw that you had no show?

A. Why, yes.

Q. Very well, then, if that was the reason, and you found that you had no show from Mr. Vogel's answer, and that was before you came to Helena to prove up, why did you come to Helena to prove up?

A. I had to prove up.

Q. Why?

A. Because I had land taken up and filed on.

Q. Yes, but you could have abandoned it, couldn't you?

A. I didn't like to do that very well. I had spent the

(Testimony of Levi B. Cyr.)

money to file on it, and had gone to the trouble to locate it and I didn't want to do that.

Q. You had got no money out of it? A. No, sir.

Q. But you had paid for filing on it?

A. Yes, sir, I had paid the money for filing and the expense of coming here.

Q. So you knew in advance then before you made your final payment, before Mr. Cobban had paid his money into the land office that it was no good?

A. What do you mean, the land?

Q. Yes. A. I never said the land was no good.

Q. I mean that it was no good for you.

A. I knew that I couldn't get to log that winter up in the Clearwater, but I would have held that land because I knew the land was all right for me.

Q. If you knew it then, why did you say a little while ago that you calculated to sell the land to Mr. Cobban after you had proved up, and found out that you couldn't log it to advantage?

A. I could have logged it if I had gotten the contract for logging it.

Q. But you knew as a matter of fact that you couldn't get the contract after you had proved up?

A. No, I couldn't get any contract.

Q. Well, as a matter of fact you knew that when you proved up you expected to sell the land after you proved up, but you had made up your mind you couldn't do anything with it?

A. I made up my mind that I would hire my horses

(Testimony of Levi B. Cyr.)

for the winter. When I asked Mr. Cobban to loan me the money to prove up, why I expected to buy more horses, and I could borrow the money on the horses, and I said to him, if you can make me a loan I can secure you on my team.

Q. Is it not true, Mr. Cyr, that two or three days after you proved up at Helena you went right back to Missoula and sold this land to Mr. Cobban?

By Mr. WALSH.—We object to that; the witness cannot be asked as to his recollection about the matter without showing him the paper.

By the EXAMINER.—Yes, he has a right to be shown the deed under our statute.

By Mr. WALSH.—Show him also the deed and the final proof papers and then he will tell you.

By Mr. MAYNARD.—Well, I show you the final proof. There is your signature to the final proof, is it not?

A. Yes, sir.

Q. That is Levy B. Cyr, is it not? A. Yes, sir.

Q. And this seems to bear date the 18th of September?

By Mr. WALSH.—That is a mistake.

By the WITNESS.—That should be December.

By Mr. MAYNARD.—This seems to be the 18th of September.

A. You said it was the 18th of December.

By Mr. WALSH.—It can be fixed by the date of the final proof—the final receipt.

(Testimony of Lævi B. Cyr.)

Q. Now, the final receipt is dated the 18th of December, 1899, and by that it appears that Cobban paid into the land office $200.00. A. Yes, I expect so.

Q. Well, now then, four days thereafter on the 22d of December, you sold to him?

A. Well, it may have been four days. I don't remember just how many days. I know it was after I proved up that I sold to him.

Q. I read from the deed: "This Indenture, made the 22d day of December, in the year of our Lord, one thousand eight hundred and ninety-nine, between Levy B. Cyr, and Ursula Cyr, husband and wife, of Quigley, Granite County, Montana, parties of the first part, and Robert M. Cobban, of Missoula, Montana, party of the second part;

"Witnesseth, that the party of the first part for and in consideration of the sum of seven hundred dollars, lawful money of the United States to them paid, for the north half of the northeast quarter of section 18, township 16 north, of range fourteen west, west of principal meridian of Montana."

It was acknowledged before Mr. Edward E. Cleaver on the 22d day of December, of the year one thousand eight hundred and ninety-nine, the acknowledgment reads as follows: "County of Missoula, State of Montana,—ss. On this 22d day of December, in the year of our Lord, one thousand eight hundred and ninety-nine before me, Edward E. Cleaver, a notary public in and for the county of Granite and State aforesaid, per-

(Testimony of Levi B. Cyr.)

sonally appeared Levy B. Cyr and Ursula Cyr, known to me personally to be the persons whose names are subscribed to the within instrument and who acknowledged to me that they executed the same. Edward E. Cleaver, notary public in and for Granite County, Montana."

By Mr. WALSH.—We move that this be stricken out for the reason that it is no testimony and no response to a question asked by the witness.

Q. Do you know who this is, Edward E. Cleaver?

A. Yes, sir.

Q. Where does he live now?

A. I don't know where he lives now, but he did live in Quigley, Granite County, at the time.

Q. He was living in Quigley, Granite County?

A. Yes, sir.

Q. You were living there at that time?

A. My wife was there, but I wasn't there all the time.

Q. Were you in Quigley at the time that you signed this deed? A. Yes, sir.

Q. How far is Quigley from Missoula?

A. About 45 miles.

Q. About 45 miles? Do you know how this deed that you signed before it was executed got up to Quigley?

A. I think I took it over myself, if I remember right.

Q. But you took it over yourself when you stopped at Missoula? A. Yes, sir.